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Supreme Court of the United States

OCTOBER TERM, 1954

No. 48

LOUIS SHOMBERG, PETITIONER

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 24, 1954

CERTIORARI GRANTED OCTOBER 14, 1954

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 48

LOUIS SHOMBERG, PETITIONER

vs.

UNITED STATES OF AMERICA

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IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Petition No. 617157

ORDER TO SHOW CAUSE—July 28, 1953

Upon the annexed affidavit of MAX SCHULTZ, duly verified the 28th day of July, 1953; upon the petition filed herein on December 22, 1952; and upon all the proceedings heretofore had herein, Let the District Director of the Immigration and Naturalization Service show cause before this Honorable Court at a stated term thereof for naturalization proceedings, to be held at Room 506, U. S. Courthouse, Foley Square, in the Borough of Manhattan, City of New York, on the 30th day of July, 1953 at 10:00 A. M. in the forenoon of that day or as soon thereafter as counsel can be heard, why an order should not be made directing:

(1) That the petition filed herein on December 22, 1952 be brought on for final hearing forthwith or as soon as the Court may direct; and

(2) That the deportation proceedings against the petitioner commenced by the District Director of the Immigration and Naturalization Service pursuant to a Warrant of Arrest issued by him under date of June 22nd, 1953 and now pending before a Special Inquiry Officer under the jurisdiction of and assigned by said District Director, be stayed pending final hearing upon and adjudication of the petition for naturalization filed herein; and

[fol. 4] (3) Such other and further relief as to the Court may seem just and proper.

And pending the hearing and determination of this application and the entry of an appropriate order hereon, Let the deportation proceedings against the petitioner commenced and pending as aforesaid be stayed and they hereby are stayed.

Sufficient cause appearing, Let service of a copy of this order together with a copy of the annexed affidavit on the District Director of the Immigration and Naturalization Service at his office, No. 70 Columbus Avenue, New York,

New York, on or before the 29th day of July, 1953 at 4 P. M. in the afternoon be deemed sufficient.

Dated, New York, N. Y., July 28th, 1953.

E. J. Dimock, United States District Judge.

[fol. 5] In United States District Court

Affidavit of Max Schultz in Support of Motion

State of New York,
City of New York,
County of New York, ss:

Max Schultz, being duly sworn, deposes and says:

1. That he is the attorney for the petitioner above named.

2. That the petitioner did heretofore, on or about October 1, 1952 submit a preliminary application to file a petition for naturalization to the Immigration and Naturalization Service, No. 70 Columbus Avenue, New York, New York.

3. That thereafter petitioner was notified to appear with his witnesses for preliminary examination, and he did appear with his witnesses for such preliminary examination, and such preliminary examination was completed on or about December 22nd, 1952.

4. That following the completion of such preliminary examination, on December 22, 1952, petitioner filed his petition, for naturalization, #617157, in the United States District Court for the Southern District of New York under [fol. 6] the provisions of Sec. 310(a) of the Nationality Act of 1940, as amended (54 Stat. 1144-1145).

5. That on information and belief one, Joseph J. Gaudino, an official of the Immigration and Naturalization Service and subject to the jurisdiction of the District Director was named as "designated examiner" pursuant to applicable law and regulations.

6. That on information and belief complete outside investigations of petitioner's character and qualifications were ordered and made and have been and are completed.

7. That despite the requirements of applicable regula-

tions that the "designated examiner shall, *as soon as practicable after the conclusion of the preliminary examination*, prepare an appropriate recommendation for the court" and notify the petitioner or his attorney thereof,[1] neither petitioner nor his attorney has ever received such notification.

8. That on June 23rd, 1953 petitioner was taken into custody by officers of the Immigration and Naturalization Service pursuant to a Warrant of Arrest issued by the District Director under date of June 22nd, 1953 for the purpose of deporting petitioner and removing him from the United States.

9. That the reasons given for petitioner's deportation in said Warrant of Arrest were not reasons for deportation authorized by any law in effect at the time petitioner's petition for naturalization was filed.

[fol. 7] 10. That on June 24th, 1953 a hearing was conducted on petitioner's deportation before one, Samuel Dorfman, who on information and belief is a Special Inquiry Officer of the Immigration and Naturalization Service and subject to the jurisdiction of the District Director.

11. That said Special Inquiry Officer has not as of this date issued an order for petitioner's deportation.

12. That at the time petitioner was taken into custody he was held without bail but thereafter, on June 24, 1953, petitioner was released from custody pursuant to a bond.

13. That deponent is informed and believes that the District Director of the Immigration and Naturalization Service, through his agents and employees and those officers and officials of the Immigration and Naturalization Service under his jurisdiction, and particularly the designated examiner and the Special Inquiry Officer above named, have no intention of proceeding to final hearing on petitioner's petition for naturalization, but on the contrary intend to deport petitioner from the United States and thereby preclude any further proceedings pursuant to petitioner's petition for naturalization and thus make of his petition a nullity.

[1] Ch. I, Title 8, C. F. R. Sec. 335.12 335.13, 17 Fed. Reg. 11551.

14. Deponent believes that the District Director of the Immigration and Naturalization Service and his agents and employees and those officials and officers of the Immigration and Naturalization Service under his jurisdiction have misconstrued and misinterpreted Section 318 of the Immigration and Nationality Act of 1952 (Act of June 27, 1952, 66 Stat. 163) as authorizing such action.

[fol. 8] 15. Deponent submits that other sections of the Immigration and Nationality Act of 1952, and particularly Section 405 thereof, indicate that the District Director's view of Section 318 is clearly erroneous, and accordingly deponent submits that the District Director and his agents and employees and those officials and officers of the Immigration and Naturalization Service under his jurisdiction are proceeding without lawful authority and in actuality contrary to all applicable law.

16. That "exclusive jurisdiction to naturalize persons as citizens of the United States" is conferred, *inter alia*, upon the District Courts of the United States[2] and that neither the District Director of the Immigration and Naturalization Service nor any of his agents or employees nor any officers or officials of the Service, nor the Commissioner, Deputy Commissioner, or Assistant Commissioners, nor the Attorney General, has the power to adjudicate or determine or decide whether petitioner's petition for naturalization should or should not be granted; but on the contrary, only this Court has that power.

17. That the Special Inquiry Officer, before whom the proceedings for petitioner's deportation are now pending, may issue an order for the deportation of petitioner at any time, and that pursuant to such order of deportation petitioner may be immediately removed from the United States and as a consequence thereof petitioner's right to an adjudication on his petition for naturalization and this Court's exclusive judisdiction thereover may be forever defeated.

[fol. 9] 18. Wherefore deponent respectfully requests the annexed order to show cause why an order should not be made directing that the petition herein be brought on for

[2] See 310(a), Immigration and Nationality Act of 1952, formerly Sec. 301(a), Nationality Act of 1940, as amended.

final hearing before the District Court at a stated term for naturalization at the time therein set forth, and that the deportation proceedings against petitioner be stayed pending final hearing and adjudication of petitioner's petition for naturalization; and for a stay of the deportation proceedings against petitioner until such time as the issues raised by the annexed order to show cause are heard and determined.

19. That no previous application for the annexed order to show cause has heretofore been made to this Court or any judge thereof.

Max Schultz.

(Sworn to July 28, 1953.)

[fol. 10] In United States District Court

Affidavit of Max Blau in Opposition to Motion

State of New York,
County of New York,
Southern District of New York, ss:

Max Blau, being duly sworn, deposes and says:

I am an attorney in the Office of the District Counsel, Immigration & Naturalization Service, United States Department of Justice, and am familiar with the facts hereinafter set forth which are disclosed by the relevant files and records of the Immigration & Naturalization Service.

This affidavit is made in opposition to an application by Louis Shomberg, alias Henry Goldberg, for an order directing the District Director of Immigration & Naturalization at New York to calendar his naturalization petition for final hearing, and staying deportation proceedings pending adjudication of said petition.

Petitioner herein filed a naturalization petition in this Court on December 22, 1952 which, after a preliminary examination, was continued for investigation. During the course of the investigation information was received to the effect that petitioner is and was a notorious racketeer and gangster, with an extensive criminal record including two

convictions for crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct.

[fol. 11] As petitioner's convictions aforesaid render him deportable under the provisions of Clause (4) of Section 241(a) of the Immigration and Nationality Act of 1952, an immigration warrant of arrest was duly issued on June 22, 1953, charging him with being in the United States in violation of law, and subject to deportation on the charge that after entry into the United States he was convicted of two crimes involving moral turpitude, to wit, the crimes of grand larceny, second degree, and manslaughter in the first degree. Petitioner was apprehended under said warrant of arrest and thereafter released under $10,000 bond.

On June 24, 1953 a deportation hearing was duly conducted before a Special Inquiry Officer as provided by statute [8 U. S. C. § 1252(b)]. No decision has as yet been rendered therein because petitioner's counsel requested and was given until August 3, 1953 to submit evidence and a brief in support of his application to terminate the proceedings.

Since deportation proceedings are now pending against this petitioner pursuant to a warrant of arrest issued under the Immigration and Nationality Act of 1952, a final hearing on his naturalization petition is prohibited. The relevant statute, Section 318 of the Immigration and Nationality Act of 1952 (8 U. S. C. § 1429), provides in pertinent part as follows:

> "Notwithstanding the provisions of section 405(b), and except as provided in sections 327 and 328 no person shall be naturalized against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this or any other Act; and no petition for naturalization shall be finally heard by a naturalization court if there [fol. 12] is pending against the petitioner a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this or any other Act; * * *"

The above quoted statutory provisions are substantially similar to the language contained in the earlier Act (Section 27, Internal Security Act of 1950; Public Law 831,

81st Cong.). The predecessor statute was construed by the Court of Appeals for the Second Circuit as a complete bar to naturalization. *United States ex rel. Jankowski v. Shaughnessy*, 186 F. 2nd 580 (1951), affirming 93 F. Supp. 7. In that case the Court of Appeals said:

> "Appellant contends that this provision does not apply to a naturalization petition pending at the time when the new Act became effective. For the reasons stated by the judge below, we see no merit in that contention."

In view of the statutory interdict against a final hearing of his naturalization petition, the instant motion to compel such a hearing should be denied. Similarly, petitioner's application for a stay of deportation proceedings should be denied, as it is clear from the statute that Congress intended, with exceptions not here applicable, that no deportable alien should be naturalized. Moreover, even if the Court had power to naturalize an alien while deportation proceedings are pending against him, this does not constitute sufficient reason for restraining the Attorney General or his subordinate from carrying out the statutory mandate to determine the question of deportability. See *Klig v. Watkins*, D. C. N. Y. 1948, 84 F. Supp. 486.

It might be added that, in any event, the investigation [fol. 13] in the naturalization case has not been completed and considerable time must elapse before the designated examiner will be in a position to make the required findings of fact, conclusions of law and recommendation to the naturalization court. In making that recommendation, the designated examiner and the Court in deciding whether petitioner has established the statutory prerequisites for naturalization could and should consider the findings and determination in the deportation proceeding.

Wherefore, it is respectfully prayed that petitioner's motion be denied in all respects, and that the temporary stay contained in the order to show cause, dated July 28, 1953, be vacated and set aside.

Max Blau.

Sworn to August 4, 1953.

[fol. 14] IN THE UNITED STATES DISTRICT COURT

OPINION—August 21, 1953

Appearances:

Max Schultz, Esq., Attorney for Petitioner, 261 Broadway, New York 7, N. Y. Alan Y. Cole Esq., Washington, D. C., Of Counsel.

Louis Steinberg, Esq., District Counsel, U. S. Department of Justice, Immigration & Naturalization Service. Max Blau, Esq., Attorney, U. S. Department of Justice, Immigration & Naturalization Service.

DIMOCK, D. J.:

Petitioner in this naturalization proceeding filed his petition on December 22, 1952. At that time there was in force [fol. 15] section 329(c) of the Nationality Act of 1940, as added by section 27 of the Internal Security Act of 1950, 8 U. S. C. § 729 (c), which prohibited naturalization where there was outstanding a final finding of deportability and prohibited final hearing in naturalization if a deportation proceeding was pending. Petitioner was not, however, liable to deportation at that time and was therefore, so far as this provision for priority of deportation proceedings was concerned, eligible for naturalization. Two days later, nevertheless, on December 24, 1952, the Immigration and Nationality Act of 1952 went into effect and by its section 241(a)(4), created as a new ground for deportation the commission at any time of two felonies involving moral turpitude. Petitioner had committed two such felonies, one in 1913 and one in 1915. Pursuant to that section deportation proceedings were begun against him on June 23, 1953, and they are now pending undetermined.

Petitioner, in spite of the provision for priority of deportation proceedings, makes this motion for an order that his petition for naturalization filed on December 22, 1952 be brought on for final hearing forthwith and that the deportation proceeding be stayed pending determination of the naturalization proceeding.

The provision for priority of deportation proceedings grew out of the fact that there were cases where an alien

subject to deportation was nevertheless eligible for naturalization. This led to a race between the Attorney General and the alien, the Attorney General seeking to deport the alien and the alien seeking to obtain naturalization. See United States v. Waskowski, 7 Cir., 1947, 158 F. 2d 962; United States v. District Director of Imm. & Nat., 2 Cir., 1949, 175 F. 2d 693; Petition of Kavadias, 7 Cir., 1949, 177 F. [fol. 16] 2d 497. Congress in 1950 gave the clear track to the Attorney General by adopting the priority section providing against naturalization after issuance of a warrant of deportation and staying naturalization proceedings pending deportation proceedings. See United States v. Shaughnessy, 2 Cir., 1951, 186 F. 2d 580, 582. Since the adoption of the priority provision it is within the power of the Attorney General, by the institution or withholding of deportation proceedings against an alien who is subject to deportation either to stay his naturalization proceedings and deport him or to let him proceed to the safe refuge of a certificate of naturalization.

The provision for priority of deportation proceedings was continued in section 318 of the Immigration and Nationality Act of 1952, 8 U. S. C. § 1429, which, so far as important here, reads as follows:

> "Sec. 318. * * * Notwithstanding the provisions of section 405(b), * * * no person shall be naturalized against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this or any other Act; and no petition for naturalization shall be finally heard by a naturalization court if there is pending against the petitioner a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this or any other Act."

Petitioner's ground for moving for a hearing of his naturalization petition despite the institution of deportation proceedings is a savings provision in the Immigration and Nationality Act of 1952 § 405, 8 U. S. C. A. § 1101 footnote, which, so far as important here, reads as follows:

> [fol. 17] "Sec. 405. (a) Nothing contained in this Act, unless otherwise specifically provided therein, shall

be construed to affect the validity of any declaration of intention, petition for naturalization, certificate of naturalization, certificate of citizenship, warrant of arrest, order for warrant of deportation, order of exclusion, or other document or proceeding which shall be valid at the time this Act shall take effect; or to affect any prosecution, suit, action, or proceedings, civil or criminal, brought, or any status, condition, right in process of acquisition, act, thing, liability, obligation, or matter, civil or criminal, done or existing, at the time this Act shall take effect; but as to all such prosecutions, suits, actions, proceedings, statutes, conditions, rights, acts, things, liabilities, obligations, or matters the statutes or parts of statutes repealed by this Act are, unless otherwise specifically provided therein, hereby continued in force and effect. * * *

(b) Except as otherwise specifically provided in title III, any petition for naturalization heretofore filed which may be pending at the time this Act shall take effect shall be heard and determined in accordance with the requirements of law in effect when such petition was filed."

Petitioner takes the position that the new provision in the Act, section 241(a)(4), making the conviction of two felonies involving moral turpitude at any time a ground for deportation, by its terms permits a deportation proceeding against him to go to a final finding of deportability and thus, if section 318, the priority section, is given literal effect, prevents his naturalization and consequently "affect[fol. 18] fect[s] the validity of" his "petition for naturalization" and "affects[s]" his "right" to naturalization "in process of acquisition".

Petitioner attempts to harmonize these to him discordant provisions by saying that it is only to proceedings based on warrants of deportation issued on grounds in existence prior to the 1952 Act that the priority afforded by section 318 applies. While that might have been an intelligible legislative scheme, Congress used no words to indicate that that was its intention. To read it into the statute would be judicial legislation.

Petitioner argues as an alternative that the priority

ings but the fact that section 405(b) specifically makes exactly that provision as to naturalization proceedings in- [fols. 21-24] dicates that the general language in section 405(a) does not apply to them. Thus, when section 318 provides for priority of deportation proceedings "notwithstanding the provisions of section 405(b)", it precludes reliance on the preservation of rights under the old law to keep naturalization proceedings from being superseded by deportation proceedings.

Petitioner argues that, if section 318 is permitted to bar a final hearing on his naturalization petition, it has the effect of rendering the savings clauses in section 405 entirely meaningless. That is not true. The savings clauses preserve for pending proceedings all of the old law as to naturalization. It is only the old law as to deportation which is rendered inapplicable by section 318.

Motion denied and stay restraining prosecution of deportation proceedings vacated.

Dated: August 21, 1953.

E. J. Dimock, United States District Judge.

[fol. 25] In the United States Court of Appeals for the Second Circuit, October Term, 1953

No. 134

Argued December 17, 1953

Docket No. 22901

Louis Shomberg, Petitioner-Appellant,

v.

United States of America, Appellee

Before Clark, Frank and Hincks, Circuit Judges

Opinion—January 25, 1954

Appeal from the United States District Court for the Southern District of New York, Edward J. Dimock, Judge

Louis Shomberg appeals from an order, D. C. S. D. N. Y., 115 F. Supp. 336, denying his motion for a direction by the court that his petition for naturalization be brought on for final hearing and for stay of pending deportation proceedings against him until decision of his petition. Affirmed.

[fol. 26] Alan Y. Cole, Washington, D. C. (Max Schultz, New York City, on the brief), for petitioner-appellant.

Harold J. Raby, Asst. U. S. Atty., New York City (J. Edward Lumbard, U. S. Atty., New York City, and Max Blau and Lester Friedman, Attys., Immigration and Naturalization Service, on the brief) for appellee.

Clark, Circuit Judge:

This appeal is taken from a denial of petitioner-appellant's motion to have his pending petition for naturalization brought on for final hearing before he is deported, and to have the deportation proceedings against him stayed until adjudication of his petition.

Petitioner filed his petition for naturalization on December 22, 1952. At that time, as at present, in so far as it appears, he was eligible for citizenship. Nor was he then liable for deportation. Two days later, on December 24,

1952, the Immigration and Nationality Act of 1952—enacted on June 27, 1952—went into effect. It created as a new ground for deportation the commission at any time of two felonies involving moral turpitude. § 241(a)(4), 241(d), 8 U. S. C. § 1251(a)(4), 1251(d). Since petitioner had committed two such felonies, one in 1913 and one in 1915, he then became and is now liable for deportation, though this in terms does not affect his eligibility for citizenship. § 405(a, b), 8 U. S. C. § 101 footnote, quoted below. On June 22, 1953, while his naturalization petition was still pending, deportation proceedings were instituted against him, based on the ground stated. He made his present motion in the district court on July 28, 1953, and now appeals from [fol. 27] its denial by Judge Dimock in a reasoned opinion reported in D. C. S. N. Y. 115 F. Supp. 336.

Initially the government seeks dismissal of this order as not appealable, arguing that it does not come within the provisions of 28 U. S. C. § 1292(1) allowing appeal from the refusal of an injunction. But since here a stay is sought of proceedings pending elsewhere than in the current action, we think the order comes within the distinction often adverted to between the enjoining of other legal proceedings and a mere regulation of procedure within the action itself. See, e. g., *International Nickel Co.* v. *Martin J. Barry, Inc.*, 4 Cir., 204 F. 2d 583, 585; *Beckhardt* v. *National Power & Light Co.*, 2 Cir., 164 F. 2d 199; *Cover* v. *Schwartz*, 2 Cir., 112 F. 2d 566. Hence the order is appealable. The supporting objections advanced by the government, such as that petitioner's application does not comply with the requirements for the issuance of temporary injunctions stated in F. R. 65, might suggest ground of error had the application been granted, but hardly touch the question of appealability.

Turning therefore to the merits we find that the Act of 1952 contains saving clauses, § 405, 8 U. S. C. § 1101 footnote, as follows:

> "Sec. 405. (a) Nothing contained in this Act, unless otherwise specifically provided therein, shall be construed to affect the validity of any declaration of intention, petition for naturalization, certificate of naturalization, certificate of citizenship, warrant of arrest,

order or warrant of deportation, order of exclusion, or other document or proceeding which shall be valid at the time this Act shall take effect; or to affect any prosecution, suit, action, or proceedings, civil or criminal, brought, or any status, condition, right in process of acquisition, act, thing, liability, obligation, or matter, [fol. 28] civil or criminal, done or existing, at the time this Act shall take effect; but as to all such prosecutions, suits, actions, proceedings, statutes, conditions, rights, acts, things, liabilities, obligations, or matters the statutes or parts of statutes repealed by this Act are, unless otherwise specifically provided therein, hereby continued in force and effect. * * *

"(b) Except as otherwise specifically provided in title III, any petition for naturalization heretofore filed which may be pending at the time this Act shall take effect shall be heard and determined in accordance with the requirements of law in effect when such petition was filed."

It also has a priority provision, § 318, 8 U. S. C. § 1429:

"Sec. 318. * * * Notwithstanding the provisions of section 405(b) of this Act, and except as provided in sections 1438 and 1439 of this title no person shall be naturalized against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this chapter or any other Act; and no petition for naturalization shall be finally heard by a naturalization court if there is pending against the petitioner a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this chapter or any other Act * * *"

Our problem is to find an harmonious interrelation of these provisions.

Petitioner argues that § 318 was intended to apply only to cases where naturalization proceedings were instituted subsequent to the effective date of the Act, and that its predecessor, § 329(c) of the Nationality Act of 1940, which makes substantially the same provision, can apply only to [fol. 29] deportation proceedings under that Act. He thus

finds an interstice covering the narrow category of cases where naturalization was commenced under the old law and deportation is attempted under the new. To support his position he points out that when Congress added the proviso, "Notwithstanding the provisions of section 405(b)" in drafting § 318, it added the semicolon which separates the "final finding of deportability" from the pending deportation proceedings provisions of the section. From this he argues that the matter following the semicolon is not subject to the "Notwithstanding" clause and not removed from the impact of § 405(b). This close reading of the statute might be justified if there were any indications in the general scheme of the provisions or in legislative history to lend support. But in the absence thereof, we are not constrained to grant such substantive effect to so minor and ambiguous a punctuational variation.

Next it is urged that since the "Notwithstanding" clause makes reference only to § 405(b), it necessarily leaves § 405(a) in effect; that § 405(a) decrees that "Nothing contained in this Act * * * shall be construed * * * to affect any * * * right in process of acquisition * * *"; that petitioner's naturalization is a "right in process of acquisition"; and that to allow deportation proceedings, not possible except under this Act, to suspend his right to a final hearing is to construe the Act to "affect" a "right in process of acquisition." At first blush this argument is persuasive, for naturalization has been held to be a "right," once the statutory qualifications have been met. *Tutun v. United States*, 270 U. S. 568, 578. But on closer inspection it is clear that the proffered reading is at the expense of several other provisions of the Act.

In the first place, to read § 405(a) so broadly as to remove petitioner's case from § 318 is to give it scope which makes § 405(b) entirely redundant. For if a petition for natu- [fol. 30] ralization, once filed, confers a "right in process of acquisition" which may not in any way be "affected" by the Act, it must necessarily follow that the petition "shall be heard and determined in accordance with the requirements of law in effect when such petition was filed." Of course it is conceivable that Congress intended to sacrifice brevity to clarity and inserted § 405(b) to make doubly clear

what was already the law under § 405(a). But in this view the phrase "Notwithstanding the provisions of section 405(b)" must refer only to the clarifying subsection, and thus have no significance—a result which seems unlikely.

As noted above, the prior law contained a provision for priority of deportation proceedings which must be deemed a part of "the requirements of law in effect when [the instant] petition was filed." And there can be no doubt that § 318 provides the same priority in respect to proceedings commenced under the new act. If there were nothing more, petitioner's argument of an hiatus would be rather persuasive. But § 318 makes specific reference to § 405(b), which by its terms applies only to cases within the alleged hiatus. The conclusion is inescapable that the urged construction does violence to the Act.

Furthermore, the "Notwithstanding" clause is not confined to § 318. It appears in several other provisions, *e. g.*, § 313(a), 8 U. S. C. § 1424(a); § 315(a), 8 U. S. C. § 1426(a); § 331(d), 8 U. S. C. § 1442(d), and each time raises the same problem. A single example will suffice. Section 331(d) provides for the termination of enemy alien status and goes on to declare that: "Notwithstanding the provisions of section 405(b) of this Act, this subsection shall also apply to the case of any such alien whose petition for naturalization was filed prior to the effective date of this chapter and which is still pending on that date." Under the urged construction the filing of a petition would confer a "right in process of acquisition" which, notwithstanding the patent [fol. 31] effort of Congress to extend the benefits of this section, could not under § 405(a) be "affected" thereby. Such interpretation is ridiculous.

The phrase "right in process of acquisition" appears in a context which if taken alone is obviously broad and quite embracing. It is not now before us for definition of its full sweep; but it would seem that petitions may be saved from various technical and procedural changes, and presumably rights "in process of acquisition" other than those stemming from a naturalization petition will be discovered. Compare generally *Petition of Menasche*, D. C. P. R., 115 F. Supp. [illegible]. Be that as it may, in holding that its general terms must be read with the specific provisions of § 405(b)

and do not override § 318 we are not denying its effect in the manner that a contrary construction would nullify other portions of the statute.

It is suggested that in thus concluding we are reading the instant case out of § 405(a) by implication in contravention of the section's mandate that it apply "unless otherwise *specifically* provided." (Emphasis supplied.) On the contrary, we have followed merely the time-honored precept of reading a statute as a whole. Nor is it significant that the draftsman of § 330(b), 8 U. S. C. § 1441(b), in providing a limited saving clause, expressly leaves § 318 intact. The draftsman there was faced with a narrow problem, and the impact of all related sections was immediately foreseeable.

If the conclusion thus made inevitable appears harsh, the decision and responsibility is that of Congress, which has disclosed its general and over-all intent in unmistakable terms. It has made the new ground of deportability of 8 U. S. C. § 1251(d), *supra*, clearly applicable to aliens entering or facts occurring prior to June 27, 1952; and its retroactivity has been recognized and upheld. *U. S. ex rel. Nukk* v. *District Director of Immigration & Naturalization*, [fol. 32] 2 Cir., 205 F. 2d 242 and cases cited 243, note 1. To allow the anomaly of an apparent try for citizenship by such deportable persons who had the foresight or the accident of seeking citizenship during the brief period between enactment and effective date of the new Act is to make mercy strange and fortuitous indeed. The interpretation here stated has at least the virtue of promoting consistency of treatment of the aliens.

Order affirmed.

FRANK, Circuit Judge (concurring):

My colleagues say that the conclusion they reach is "inescapable," and that any other interpretation of the statute "is ridiculous." My doubts are too strong to allow me to join in such strong language. These doubts do not stem from petitioner's attempt at a thoroughgoing semicolonization of § 318; for punctuation should play a small

role in statutory construction.[1] My doubts are provoked by the following:

Section 318 specifically mentions § 405(b) as the sole part of § 405 which is to be inoperative when it clashes with § 318. This reference to clause (b) discloses a selective purpose, *i. e.*, not to refer to § 405(a). Moreover, § 405(a) by its express terms provides, "Nothing contained in this Act, *unless otherwise specifically provided therein*, shall be construed * * * to affect any * * * right in process of acquisition * * *; but as to all such * * * rights * * * the statutes or parts of statutes repealed by this Act are, *unless otherwise specifically provided therein*, hereby contained in force and effect * * * *."*[1a] It would seem, then, that to apply § 318 to "rights in process of acquisition" is exactly [fol. 33] what both § 318 and 405 (a) deliberately said we must not do, since such an application not only (1) disregards the explicit and selective reference in § 318 to § 405 (b) but also (2), reading § 318 into § 405 (a) by mere implication, disregards the words in § 405 (a) "unless specifically provided therein." It is noteworthy, too, that the phrase "rights in process of acquisition" in § 405 (a) is new; it was not in the savings clause of the 1949 Act; it thus appears that Congress intended to broaden this savings provision. *See Petition of Menasche*, 115 Fed. Supp. 434, 436.[2] And § 330 (b),[3] a limited savings clause, con-

[1] Cf. Johnson, J., in *United States* v. *Palmer*, 3 Wheat. 610, 636, that men's lives should not "depend upon a comma."

[1a] Emphasis added.

[2] That naturalization is a "right," see *Tutun* v. *United States*, 270 U. S. 568, 578.

[3] It reads as follows: "Any person who was excepted from certain requirements of the naturalization laws under section 325 of the Nationality Act of 1940 prior to its amendment by the Act of September 23, 1950, and had filed a petition for naturalization under section 325 of the Nationality Act of 1940, may, if such petition was pending on September 23, 1950, and is still pending on the effective date of this

tains striking evidence that, when Congress meant to have § 318 apply retroactively—*i.e.*, to naturalization petitions pending at the time the 1952 Act became effective—Congress plainly said so and did not rely upon mere implication.

Despite these doubts, I concur, but with much hesitation. I concur only because I think the well-known dominant purpose of the chief sponsors of the Act was to ensure the deportation of persons like petitioner.

[fols. 34-35] In the United States Court of Appeals for the Second Circuit

Louis Shomberg, Petitioner-Appellant,

v.

United States, Respondent-Appellee

Judgment—Filed January 25th, 1954

Appeal from the United States District Court for the Southern District of New York

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel. On consideration whereof, it is now hereby ordered, adjudged,

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such petition was filed: Provided, That any such person shall be subject to the provisions of section 313 and to those provisions of section 318 which relate to the prohibition against the naturalization of a person against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this or any other Act, or which relate to the prohibition against the final hearing on a petition for naturalization if there is pending against the petitioner a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this or any other Act."

and decreed that the order of said District Court be and it hereby is affirmed.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

[File endorsement omitted.]

[fol. 36] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 24] SUPREME COURT OF THE UNITED STATES

October Term, 1954

No. 48

LOUIS SHOMBERG, PETITIONER

v.

UNITED STATES OF AMERICA

ORDER ALLOWING CERTIORARI—Filed October 14, 1954

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted, and case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

LIBRARY
SUPREME COURT U.S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. [redacted]

LOUIS SHOMBERG, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No. 717

LOUIS SHOMBERG, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner, Louis Shomberg, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit, entered in the above-entitled case on January 25, 1954.

OPINIONS BELOW

The opinion of the District Court (R. 14-21) is reported in 115 F. Supp. 336.

The opinions of the Court of Appeals for the Second Circuit (R. 25-32) is reported in 210 F. 2d 82.

JURISDICTION

The judgment of the Court of Appeals was entered on January 25, 1954 (R. 32-33). The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

QUESTIONS PRESENTED

1. Does the savings clause in Section 405(a) or the savings clause in Section 405(b) of the Immigration and Nationality Act of 1952 govern naturalization proceedings instituted prior to the effective date of that Act and pending at the time the Act took effect?

2. If there is a conflict in the application of Sections 405(a) and 405(b) to a naturalization proceeding pending at the time the Act took effect, does the savings clause in Section 405(a) prevail or does the savings clause in Section 405(b) control?

3. Does Section 405(b) of the Immigration and Nationality Act of 1952 authorize the application of Section 318 of that Act to affect naturalization proceedings pending at the time the Act became effective despite the clear prohibition in Section 405(a) that nothing contained in the 1952 Act "unless otherwise specifically provided therein" shall be construed to affect such proceedings?

The answers to questions 1-3, supra, will provide the answer to the ultimate question in this case, which is:

4. May an alien who filed a petition for naturalization prior to the effective date of the Immigration and Nationality Act of 1952, and who was at that time and is now eligible for citizenship, be deprived of a final hearing on his naturalization petition, solely because a deportation proceeding was instituted against him based upon grounds in the 1952 Act which were not a basis for deportation prior to the effective date of that Act and were therefore not in effect at the time his petition for naturalization was filed?

STATUTES INVOLVED

Section 405 of the Immigration and Nationality Act of 1952, 8 U.S.C.A. § 1101, footnote, provides in relevant part as follows:

> (a) Nothing contained in this Act, unless otherwise specifically provided therein, shall be construed to affect the validity of any declaration of intention, petition for naturalization, certificate of naturalization, certificate of citizenship, warrant of arrest, order or warrant of deportation, order of exclusion or other document or proceeding which shall be valid at the time this Act shall take effect; or to affect any prosecution, suit, action or proceedings, civil or criminal, brought, or any status, condition, right in process of acquisition, act, thing, liability, obligation, or matter, civil or criminal, done or existing, at the time this Act shall take effect; but as to all such prosecutions, suits, actions, proceedings, statutes, conditions, rights, acts, things, liabilities, obligations, or matters the statutes or parts of statutes repealed by this Act are, unless otherwise specifically provided therein, hereby continued in force and effect. * * * An application for suspension of deportation under section 19 of the Immigration Act of 1917, as amended, * * * shall be regarded as a proceeding within the meaning of this subsection.
>
> (b) Except as otherwise specifically provided in title III, any petition for naturalization heretofore filed which may be pending at the time this Act shall take effect shall be heard and determined in accordance with the requirements of law in effect when such petition was filed.

Section 318 of the Immigration and Nationality Act of 1952, 8 U.S.C. § 1429, provides in relevant part as follows:

> * * * Notwithstanding the provisions of section 405(b) * * * no person shall be naturalized against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued pursuant to this or any other Act; and no petition for naturalization shall be finally heard by a naturalization court if there is pend

> ing against petitioner a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this or any other Act; * * *

Section 329 of the Nationality Act of 1940, as amended by Section 27 of the Internal Security Act of 1950, 8 U.S.C. § 729(c), provides in relevant part as follows:

> (c) * * * No person shall be naturalized against whom there is outstanding a final finding of deportability, and no petition for naturalization shall be finally heard by a naturalization court if there is pending against the petitioner a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this or any other act. * * *

Section 241(a)(4) of the Immigration and Nationality Act of 1952, 8 U.S.C. § 1251(a)(4), provides in relevant part as follows:

> Any alien in the United States (including an alien crewman) shall, upon order of the Attorney General, be deported who * * * at any time after entry is convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefore and regardless of whether the convictions were in a single trial.

Section 19(a) of the Immigration Act of 1917, 8 U.S.C. § 155(a), provides in relevant part as follows:

> Any alien * * * who is hereafter sentenced more than once to such a term of imprisonment [of one year or more] because of conviction in this country of any crime involving moral turpitude, committed at any time after entry * * * shall, upon the warrant of the Attorney General, be taken into custody and deported. * * *

STATEMENT

Petitioner submitted a preliminary application to file a petition for naturalization, Form N-400, to the New York Office of the Immigration and Naturalization Service on or

about October 1, 1952. He was thereafter notified to appear with his witnesses for preliminary examination and, following the completion of this examination, he filed his petition for naturalization on December 22, 1952 in the United States District Court for the Southern District of New York under the provisions of Section 310(a) of the Nationality Act of 1940, as amended, 8 U.S.C. § 710(a). An examiner was designated in accordance with applicable regulations and outside investigations of Petitioner's character and qualifications were made and completed (R. 5-6). At that time, as at present, he was eligible for citizenship (R. 25).

The Immigration and Naturalization Service took none of the usual further steps to bring the petition on for final hearing. Instead, on June 22, 1953—six months and one day after the petition had been filed—the Service instituted deportation proceedings against Petitioner (R. 6). Thereafter, it refused to go forward with the final naturalization hearing but pursued the deportation proceedings with extreme and unseemly haste.

On July 28, 1953 Petitioner moved in the naturalization court by an order to show cause for an order directing that his petition for naturalization be brought on for final hearing. That order to show cause also stayed the deportation proceedings pending against him (R. 3-4). On August 21, 1953 Petitioner's motion was denied and the stay vacated (R. 14-21).

Petitioner promptly appealed to the United States Court of Appeals for the Second Circuit. On September 8, 1953 the district judge who had decided the motion in the naturalization court granted an order staying the deportation proceedings until determination and disposition of the appeal by the Second Circuit. On January 25, 1954, the Court of Appeals for the Second Circuit issued its opinions and judgment affirming the decision of the District Court (R. 25-33). Thereafter it stayed the issuance of its mandate pending disposition of the case by this Court.

The deportation proceedings instituted against Petitioner

are grounded upon Section 241(a)(4) of the Immigration and Nationality Act of 1952, 8 U.S.C. § 1251(a)(4), which did not become effective until after his petition for naturalization was filed. The charge set out in the warrant of arrest was that Petitioner had been twice convicted of crimes involving moral turpitude. Petitioner has conceded that he has been twice convicted of such crimes but has denied his deportability.[1]

Petitioner was born in London, England, in 1895 and lawfully entered the United States for permanent residence in 1903 at New York City, New York, at the age of eight. He was twice convicted of crimes involving moral turpitude in his early youth: in 1913, when he was seventeen years of age; and in 1915 when he was nineteen. He served terms in State penal institutions for both of these convictions and was never convicted of any other crimes.

At the time Petitioner was convicted—1913 and 1915—conviction for crimes was not a ground for deportation. Criminal convictions became a basis for deportation for the first time by Section 19(a) of the Immigration Act of 1917, 8 U.S.C. § 155(a), but even this Act did not render the Petitioner subject to deportation since it was expressly limited by its terms as being applicable only to those aliens who were sentenced to imprisonment after its effective date. Because Petitioner's convictions occurred prior to 1917, that statute clearly did not apply to him.

Accordingly, if Petitioner was ever amenable to deportation, it was only by virtue of a provision of the 1952 Act—which became effective after his naturalization petition was filed—and no prior provision of law ever authorized his deportation.

In view of the broad savings clause contained in Section 405(a) of the Immigration and Nationality Act of

[1] We do not believe that Section 241(a)(4) was ever intended or expected to apply to aliens in Petitioner's circumstances and it is our firm conviction that the Section is inapplicable to him. We do not press these contentions here, however, since the issue is not directly germane to this proceeding.

1952, 8 U.S.C.A. § 1101, footnote,—which provides that nothing contained in that Act should be construed to affect the validity of a petition for naturalization which was valid at the time the Act took effect, nor to affect any right in the process of acquisition, nor any proceedings pending on the effective date of the Act—Petitioner has contended that deportation proceedings which could be instituted against him *only* under the 1952 Act could not affect his right to a naturalization hearing where his petition for naturalization was filed and pending prior to the date the 1952 Act became effective.

The Immigration Service has argued that the priority provision contained in Section 318 of the Immigration and Nationality Act of 1952, 8 U.S.C. § 1429—which establishes a priority for deportation proceedings over naturalization proceedings and which prohibits a final hearing in naturalization if a deportation proceeding is pending—overrides Section 405(a) in this case and therefore justifies the denial of a final naturalization hearing to Petitioner.

Resolution of these conflicting claims calls for, *inter alia*, a determination of the relationship between and the meanings of subsections (a) and (b) of Section 405. Subsection (a) by its terms is all inclusive: it provides that nothing contained in the 1952 Act shall be construed to affect valid petitions for naturalization, rights in process of acquisition, or proceedings pending at the time the Act took effect "unless otherwise specifically provided therein". Section 405(b) is a limited savings clause which provides only that any petition for naturalization pending at the time the 1952 Act took effect shall be heard and determined in accordance with the requirements of law in effect when such petition was filed, "except as otherwise specifically provided in title III." Section 318—a provision of title III of the 1952 Act—which prohibits final naturalization hearings where deportation proceedings are pending, does not specifically refer to Section 405(a); it does specifically refer to Section 405(b). Thus, Section 318 could be held to

bar a final hearing if pending naturalization proceedings are governed by 405(b); but would not bar a final hearing if pending naturalization proceedings are governed by 405(a).

The District Court held that "Section 405(b) is *the only* provision of the Immigration and Nationality Act of 1952 which, in pending [naturalization] cases, makes the old Act applicable to the proceedings after the filing of the petition". (R. 20) (emphasis added). In so holding, however, the District Court was troubled by the plain language of Section 405(a) and conceded: "It is true that that part of Section 405(a) which continues the old act in force as to any 'right in process of acquisition' would, in its general terms, apply to naturalization proceedings * * *." (R. 20). But it resolved the problem by holding that "the fact that section 405(b) specifically makes exactly that provision as to naturalization proceedings indicates that the general language in section 405(a) does not apply to them." (R. 20-21). The District Court also held, without differentiating between subsection (a) and (b), that "the savings clauses in Section 405" preserve for pending proceedings only the old law as to naturalization, but that Section 318 renders the old law as to deportation inapplicable (R. 21).

The Court of Appeals affirmed the decision of the District Court but shifted the grounds of decision. By reasoning in reverse, it held that if Petitioner's naturalization petition was saved under Section 405(a), Section 405(b) would have no significance and would be "entirely redundant" (R. 28). In order to avoid this result, it concluded that Petitioner's situation fell within Section 405(b) of the Act. By so concluding, it rendered 405(a) without significance, which was the very thing it refused to do to 405(b). It gave no positive reasons to support this interpretation except that "a contrary construction would nullify other portions of the statute" (R. 30). In what appears to be justification, the Court below stated that its interpretation had "at least the virtue of promoting consistency of treatment of aliens" (R. 30).

In a concurring opinion, Judge Frank indicated that he had "strong doubts" about the construction placed upon these provisions by the Court. His doubts are succinctly stated:

> "Section 318 specifically mentions § 405(b) as the sole part of § 405 which is to be inoperative when it clashes with § 318. This reference to clause (b) discloses a selective purpose, i.e., not to refer to § 405(a). Moreover, § 405(a) by its express terms provides, 'Nothing contained in this Act, *unless otherwise specifically provided therein*, shall be construed * * * to affect any * * * right in process of acquisition * * *: but as to all such * * * rights * * * the statutes or parts of statutes repealed by this Act are, *unless otherwise specifically provided therein*, hereby continued in force and effect * * *' It would seem, then, that to apply § 318 to 'rights in process of acquisition' is exactly what both §§ 318 and 405(a) deliberately said we must not do, since such an application not only (1) disregards the explicit and selective reference in § 318 to § 405(b) but also (2), in reading § 318 into § 405(a) by mere implication, disregards the words in § 405(a) 'unless specifically provided therein.' It is noteworthy, too, that the phrase 'rights in process of acquisition' in § 405(a) is new; it was not in the savings clause of the 1949 Act; it thus appears that Congress intended to broaden this savings provision. See *Petition of Menasche*, 115 Fed. Supp. 434, 436. And § 330(b), a limited savings clause, contains striking evidence that, when Congress meant to have § 318 apply retroactively—i.e., to naturalization petitions pending at the time the 1952 Act became effective—Congress plainly said so and did not rely upon mere implication." (R. 31-32).

Despite these doubts, and "with much hesitation", Judge Frank concurred. He did so, however, only because he thought, "the well-known dominant purpose of the chief sponsors of the Act was to ensure the deportation of persons like petitioner" (R. 32).

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

1. In holding that the naturalization petition filed by Petitioner prior to the effective date of the Immigration and Nationality Act of 1952 is governed by Section 405(b) of that Act.

2. In holding that where there is a conflict in the application of Sections 405(a) and 405(b), Section 405(b) prevails over Section 405(a).

3. In holding that Section 318 of the Immigration and Nationality Act of 1952 applies to naturalization proceedings pending at the time that Act took effect, despite the prohibition contained in Section 405(a) of that Act.

4. In holding that Section 318 does not differentiate between petitioners for naturalization against whom deportation proceedings are pending and petitioners against whom there is outstanding a final finding of deportability.

5. In affirming the decision of the District Court.

REASONS FOR GRANTING WRIT

1. This case raises substantial questions regarding the meaning of the savings clauses of the Immigration and Nationality Act of 1952 and the application of these provisions to naturalization proceedings pending at the time the Act took effect. These questions can arise in almost every naturalization proceeding which was pending at the time the Act took effect where the 1952 Act wrought changes in prior law with regard to the requirements for naturalization. Since the 1952 Act made numerous changes of this nature, a definitive resolution of any ambiguities surrounding the meaning and applicability of the savings clauses is of considerable importance in the administration of the naturalization laws.

These questions arise because, when considered along with other sections of the Act, Section 405(a) can often

compel a result different from that required by Section 405(b) in the determination of naturalization proceedings which were pending at the time the 1952 Act took effect and where the applicable requisites for citizenship have been changed by that Act. Two categories of cases are directly affected: the first are those cases which involve certain provisions of the 1952 Act which made changes in the requisites for citizenship and which specifically mention Section 405(b); the second group are those cases which involve other provisions of the 1952 Act which effected changes in the requisites for citizenship, but which make no mention of Section 405.

The problem in the first group of cases arises as follows: both Section 405(a) and 405(b) appear to apply to naturalization proceedings in which petitions for naturalization had been filed prior to the effective date of the 1952 Act; both provide that the old and not the new law shall govern such proceedings unless specific provision otherwise is made in the new law; but many of the provisions in the new law expressly make reference to Section 405(b) and make no mention of Section 405(a). Using Section 318 as an example, the result is as stated in Judge Frank's concurring opinion below:

> "Section 318 specifically mentions § 405(b) as the sole part of § 405 which is to be inoperative when it clashes with § 318. This reference to clause (b) discloses a selective purpose, i.e., not to refer to § 405(a). Moreover, § 405(a) by its express terms provides, 'Nothing contained in this Act, *unless otherwise specifically provided therein*, shall be construed * * * to affect any * * * right in process of acquisition * * *'; but as to all such * * * rights * * * the statutes or parts of statutes repealed by this Act are, *unless otherwise specifically provided therein*, hereby contained in force and effect * * *." It would seem, then, that to apply § 318 to 'rights in process of acquisition' is exactly what both §§ 318 and 405(a) deliberately said we must not do, since such an application not only (1) disregards the explicit and selective reference in § 318 to

> § 405(b) but also (2), reading § 318 into § 405(a) by mere implication, disregards the words in § 405(a) 'unless specifically provided therein.' It is noteworthy, too, that the phrase 'rights in process of acquisition' in § 405 (a) is new; it was not in the savings clause of the 1949 Act; it thus appears that Congress intended to broaden this savings provision. See *Petition of Menasche*, 115 Fed. Supp. 434, 436." (R. 31).

While Section 318 is the provision involved in this case, as the District Court below noted, "Title III [of the 1952 Act] contains several specific provisions that the petition for naturalization shall in certain respects be heard and determined according to the new law 'notwithstanding the provisions of 405(b)'." (R. 20). Instances cited are: "section 311 [8 U.S.C. § 1422] making new provisions for eligibility on account of race, sex and marriage, section 313(a) [8 U. S. C. § 1424(a)] making new provisions as to subversives, section 315(a) [8 U.S.C. § 1426(a)] making new provisions with respect to aliens relieved from military service and section 331(d) [8 U.S.C. § 1442(d)] making new provisions as to alien enemies." (R. 20). And not all of these provisions impose restrictions on the right to citizenship; some have enlarged the right, e.g., § 331(d). See discussion in opinion below (R. 29).

The consequence is that with regard to any naturalization petition filed prior to the effective date of the 1952 Act in which any of the above-cited provisions have applicability the questions involved in this case arise. The specific mention of 405(b) in Section 318 and each of the above-cited provisions, and their lack of any reference to 405(a) requires a determination of which provision, 405(a) or 405(b), applies to pending naturalization proceedings; and if both are applicable—since one requires a result contrary to the other—the further determination of which in a given situation prevails.

A definitive construction of Sections 405(a) and 405(b) is also necessary to settle the problems which arise in the second category of cases where none of the above-cited

provisions are involved. These are the situations where naturalization proceedings were instituted prior to the effective date of the 1952 Act, but where a petition for naturalization had not been filed by that date,[2] and the applicable requisites for citizenship contained in the old law were changed by the new law.

A graphic example is *Petition of Menasche*, 115 F. Supp. 434, (D. Puerto Rico, 1953), affirmed 210 F. 2d 899, (C.A. 1st, March 3, 1954). That case involved an applicant for naturalization who had filed a declaration of intention under the Nationality Act of 1940, which declaration was pending at the time the Immigration and Nationality Act of 1952 took effect. He did not file his petition for naturalization until after the 1952 Act had gone into effect. Menasche's naturalization was opposed by the Government on the ground that he did not meet the physical presence requirements of the 1952 Act; but the Government conceded that Menasche did meet the physical presence requirements of the prior law and was eligible for naturalization if that law controlled. The Government contended that the new law and not the prior law applied because Section 405(b)—by referring only to instances where petitions for naturalization were filed—did not save prior law in Menasche's case since he had filed only a declaration of intention and not a petition for naturalization prior to the effective date of the 1952 Act. Menasche argued that the requirements of the old law applied to him in view of Section 405(a), which saved the old law of naturalization for proceedings instituted prior to the effective date of the 1952 Act and rights in the process of acquisition at the time that Act became effective. Resolution of these opposing contentions requires a determination as to whether Section 405(a) or Section 405(b) applies to such naturali-

[2] A naturalization proceeding could be instituted, for example, by the filing of a declaration of intention or a Form N 400, Preliminary Application to File a Petition for Naturalization. See discussion of *Petition of Menasche* and *In re Jaeson*, *infra* pages 13-14.

zation proceedings and, if they conflict in their application, which prevails.

In re Jocson, 117 F. Supp. 528 (D. Haw. 1954)[3] is another illustration. Jocson filed a Form N-400, Preliminary Application to File a Petition for Naturalization, prior to the effective date of the 1952 Act, but did not file his petition for naturalization until after that Act took effect. Under the applicable provision of the new law, Jocson would have been required to prove lawful admission to the United States for permanent residence; no such requirement existed under the old law. There was no question that he was entitled to naturalization if the old law applied—as he contended it did pursuant to Section 405(a). The Government took the position that 405(b) and not 405(a) governed and that having failed to file a petition for naturalization prior to the effective date of the Act, the new and not the old law applied. Again, the resolution of the conflicting claims calls for a definitive construction of the meaning and applicability of Sections 405(a) and 405(b).

The fundamental questions presented in the instant case are identical to those presented in the *Menasche* and *Jocson* cases. There is no way of estimating how many other naturalization proceedings are pending in courts throughout the land in which the same questions exist, but based upon the number of naturalization proceedings instituted annually,[4] the number may well run into thousands.

2. Not only are the *Menasche* and *Jocson* cases examples of the pervasiveness of the problems posed by the instant

[3] Appeal to the Court of Appeals for the Ninth Circuit was noted by the United States on March 12, 1954.

[4] According to Table 37, **Imm. & Nat. Serv. Ann. Rep. (1952)**, for the year ending June 30, 1952, 88,655 persons were naturalized; 111,461 filed Declarations of Intention; and 94,086 filed petitions for naturalization. No figures are available for the number of Form N-400's filed during this period.

For the year ending June 30, 1951, 54,716 persons were naturalized; 91,487 filed Declarations of Intention; and 61,634 filed petitions for naturalization.

case, but the construction of the savings clauses in those cases is in conflict with the decisions of the courts below.

In each case, the courts held that a naturalization proceeding instituted prior to the effective date of the 1952 Act came within the scope of Section 405(a); that persons who had instituted valid naturalization proceedings prior to the effective date had at least a "right in process of acquisition" as that phrase is used in Section 405(a); and that Section 405(a) by its express terms prevents any changes made by the 1952 Act from "affecting" such a petitioner's right to naturalization. Implicitly, these courts also held that the comprehensive savings clause of Section 405(a) was not limited by the narrow language of Section 405(b), and that if there was any conflict between these provisions the "broad and sweeping" language of Section 405(a) must prevail.

When the decision of the district court in *Petition of Menasche* was appealed by the Government to the First Circuit, the Second Circuit's decision in this case had already been issued and was available for examination on that appeal. Apparently the construction the Court below placed upon Sections 405(a) and (b) was strongly urged on the First Circuit. But this construction was unequivocally rejected:

> "Subsection (a) of § 405, however, is broad and sweeping in its terms. Indeed it is so comprehensive that subsection (b) seems redundant. See *Shomberg v. United States*, decided by the Court of Appeals for the Second Circuit January 25, 1954. But however that may be, subsection (a) provides categorically that 'Nothing contained in this Act, unless otherwise specifically provided therein, shall be construed to affect the validity of any declaration of intention, . . . or to affect . . . any status, condition *right in process of acquisition* [italics ours] . . . existing, at the time this Act shall take effect; but as to all such . . . rights . . . the statutes or parts of statutes repealed by this Act are, unless otherwise specifically provided therein, hereby continued in force and effect.'" *U. S. v. Menasche*, 210 F. 2d 869, 871

The First Circuit's express citation of the decision of the Court below, and its refusal to follow it, establish a conflict which should be settled by a decision of this Court.

3. The decision of the Court below, when considered in the light of the decisions of the First Circuit in the *Menasche* case and the District Court for Hawaii in the *Jocson* case, creates an anomaly in the application of the savings clauses to naturalization proceedings which is neither reasonable nor supportable in logic or in the law.

In the *Menasche* case, it was held that the filing of a declaration of intention prior to the effective date of the 1952 Act gave the applicant a right in process of acquisition which, under Section 405(a), could not be affected by any changes made by the new law, and as to which Section 405(a) continued in force the old law. In the *Jocson* case, it was held that the filing of a Form N-400, Preliminary Application to File a Petition for Naturalization, likewise gave the applicant a right in process of acquisition which merited the protection of Section 405(a). But in the instant case, where the petition for naturalization itself was filed prior to the effective date of the 1952 Act, the Petitioner has been denied the protection of Section 405(a), and placed under Section 405(b).

This strange result is all the more peculiar since the Petitioner in the instant case had, in fact, filed a Form N-400, prior to filing his petition for naturalization. He had not only done as much as the petitioners in *Menasche* and *Jocson*, but had, in fact, done more. Yet despite the fact that his application for citizenship was further advanced than the applications of either Menasche or Joeson, under the decision of the Court below he is denied the protection of Section 405(a) and is thus accorded less protection under the savings clauses.

We believe that the decision of the Court below is erroneous and the conflicting decisions in the *Menasche* and *Jocson* cases are correct.

4. The substantiality of the questions presented, and the need at this time for answers from this Court, is evidenced by the variations in views among the judges who have considered and sought to answer them. This case has been heard by four judges and there have been three different opinions, each based upon different reasoning. It is clear from the text of each of these opinions that the questions raised are vexing and hardly susceptible to a simple or quick solution. Moreover, the different opinions in the *Menasche* case, where a diametrically opposite conclusion was reached, indicate that the District and Circuit Courts there found the problem no less troublesome. It is also noteworthy that the Government has filed an appeal to the Court of Appeals for the Ninth Circuit in the *Jocson* case and presumably there will be a new opinion on these questions from that Circuit shortly. Such confusion, so readily apparent, is ample evidence of the need for a definitive construction of the savings clauses by this Court.

5. In their efforts to resolve the difficult problems of statutory construction posed by the instant case, the three judges below who have written opinions have set out differing views with regard to the philosophy and purpose of the savings clauses in the Immigration and Nationality Act of 1952. Each of the opinions contains some reference to the so-called intentions of the Congress with regard to these problems, and the range of variation has been extreme. Thus, Judge Clark resolved certain unsatisfactory aspects of his interpretation by suggesting that it had "at least the virtue of promoting consistency of treatment of aliens" (R. 30). Judge Frank resolved his doubts because he thought "the well-known dominant purpose of the chief sponsors of the Act was to ensure the deportation of persons like petitioner" (R. 32). Judge Dimock, in the District Court below, refused to accept the construction urged by Petitioner—though admitting that this construction "might have been an intelligible legislative scheme"

—for the reason that "Congress used no words to indicate that that was its intention" (R. 18).

In the opinion of the First Circuit in *United States* v. *Menasche*, *supra*, Judge Woodbury indicated in no uncertain terms that the First Circuit was not interested in a construction which had nothing more to commend itself than the "virtue of promoting consistency of treatment of aliens." Indeed, when the Government argued that the construction of the savings clauses urged by the Petitioner should be avoided "because it would leave the law as to the naturalization of aliens unsettled for many years to come", Judge Woodbury replied: "This may be so, but the argument should be addressed to Congress. The words of the statute lead clearly to the result we have reached." 210 F. 2d at 812. Chief Judge Magruder concurred separately on this specific issue. He pointed out in his separate opinion that rather than "unsettling" the law, he thought that the result of that decision would be to continue in effect the prior law as to naturalization for "a greater period than the Government would like." He went on to note that "for all we know, the Congress in so providing may have had in mind the equities of a situation * * * where, at the date the 1952 Act went into effect, the Petitioner had arrived almost at the threshold of American citizenship * * *." Judge Woodbury concluded by stating that he was

> "naturally loathe to accept the Government's contention that the Congress intended to slam the door in the face of such an applicant for citizenship and to make him start all over again". 210 F. 2d at 812.

The differing views of Congress' intention and purpose with regard to the savings clauses, as enunciated by the First and Second Circuits, can only open a Pandora's box of confusion if permitted to stand unresolved.

6. Since by their very nature, the savings clauses apply only to proceedings instituted prior to the time the Act

of 1952 became effective, it is particularly important that any doubts with regard to their meaning and applicability be resolved and determined *now*. For it is *now* that the great majority of naturalization proceedings which were initiated prior to December 24, 1952, are coming up on court calendars for final hearing. Courts in which naturalization proceedings are held and the Immigration and Naturalization Service which is charged with the administration of the naturalization laws require a definitive interpretation *at this time* if there is to be a just application and fair adjustment between the old law and the new with regard to naturalization proceedings within the scope of the savings clauses. To let years go by and to await a cluster of cases going off in different directions is to encourage rather than dispel confusion.

This is particularly the case in this day and age when an alien who has resided in this country for over 50 years can be threatened with banishment and exile for youthful deviations which have occurred more than 38 years ago and for which the penalties established by law have already once been paid—as this Petitioner now is being threatened. It would not be well to permit the priceless privilege of citizenship and the right thereto to be surrounded by obscurities and ambiguities from the opinions in such cases.

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

LOUIS SHOMBERG, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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BRIEF FOR THE PETITIONER

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 48

LOUIS SHOMBERG, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the District Court (R. 8-13) is reported at 115 F. Supp. 336.

The opinions of the Court of Appeals for the Second Circuit (R. 14-21) are reported at 210 F. 2d 82.

JURISDICTION

The judgment of the Court of Appeals was entered on January 25, 1954 (R. 21-22). The petition for a writ of

certiorari was filed on April 24, 1954, and was granted on October 14, 1954 (R. 23). The jurisdiction of this Court rests upon 28 U.S.C. Sec. 1254(1).

QUESTIONS PRESENTED

1. Does the savings clause in Section 405(a) or the savings clause in Section 405(b) of the Immigration and Nationality Act of 1952 govern naturalization proceedings instituted prior to the effective date of that Act and pending at the time the Act took effect?

2. If there is a conflict in the application of Sections 405(a) and 405(b) to a naturalization proceeding pending at the time the Act took effect, does Section 405(a) or 405(b) prevail?

3. Does Section 405(b) authorize the application of Section 318 to naturalization proceedings pending at the time the Act became effective despite the clear prohibition in Section 405(a) that nothing contained in that Act "unless otherwise specifically provided therein" shall be construed to affect such proceedings?

The answers to questions 1-3, *supra*, will provide the answer to the ultimate question in this case, which is:

4. May an alien who filed a petition for naturalization prior to the effective date of the Immigration and Nationality Act of 1952, and who was at that time and is now eligible for citizenship, be deprived of a final hearing on his naturalization petition, solely because a deportation proceeding was instituted against him based upon grounds in the 1952 Act which were not a basis for deportation prior to the effective date of that Act and were therefore not in effect at the time his petition for naturalization was filed?

STATUTES INVOLVED

Section 405 of the Immigration and Nationality Act of 1952, 66 Stat. 280, 8 U.S.C.A. Sec. 1101, footnote, provides in pertinent part:

Sec. 405 (a) Nothing contained in this Act, unless otherwise specifically provided therein, shall be construed to affect the validity of any declaration of intention, petition for naturalization, certificate of naturalization, certificate of citizenship, warrant of arrest, order or warrant of deportation, order of exclusion, or other document or proceeding which shall be valid at the time this Act shall take effect; or to affect any prosecution, suit, action, or proceedings, civil or criminal, brought, or any status, condition, right in process of acquisition, act, thing, liability, obligation, or matter, civil or criminal, done or existing, at the time this Act shall take effect; but as to all such prosecutions, suits, actions, proceedings, statutes, conditions, rights, acts, things, liabilities, obligations, or matters the statutes or parts of statutes repealed by this Act are, unless otherwise specifically provided therein, hereby continued in force and effect. When an immigrant, in possession of an unexpired immigrant visa issued prior to the effective date of this Act, makes application for admission, his admissibility shall be determined under the provisions of law in effect on the date of the issuance of such visa. An application for suspension of deportation under section 19 of the Immigration Act of 1917, as amended, or for adjustment of status under section 4 of the Displaced Persons Act of 1948, as amended, which is pending on the date of enactment of this Act, shall be regarded as a proceeding within the meaning of this subsection.

(b) Except as otherwise specifically provided in title III, any petition for naturalization heretofore filed which may be pending at the time this Act shall take effect shall be heard and determined in accordance with the requirements of law in effect when such petition was filed.

Section 318 of the Immigration and Nationality Act of 1952, 66 Stat. 244, 8 U.S.C. Sec. 1429, provides in relevant part as follows:

> * * * Notwithstanding the provisions of section 405 (b), * * * no person shall be naturalized against whom there is outstanding a final finding of deportability

> pursuant to a warrant of arrest issued under the provisions of this or any other Act; and no petition for naturalization shall be finally heard by a naturalization court if there is pending against the petitioner a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this or any other Act: * * *

Section 329 of the Nationality Act of 1940, as amended by Section 27 of the Internal Security Act of 1950, 64 Stat. 1015, 8 U.S.C. (1946 ed. Supp.) Sec. 729(c), provided in relevant part as follows:

> (c) * * * No person shall be naturalized against whom there is outstanding a final finding of deportability, and no petition for naturalization shall be finally heard by a naturalization court if there is pending against the petitioner a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this or any other Act: * * *

Section 241(a)(4) of the Immigration and Nationality Act of 1952, 66 Stat. 204, 8 U.S.C. Sec. 1251(a)(4), provides in relevant part as follows:

> Any alien in the United States (including an alien crewman) shall, upon order of the Attorney General, be deported who * * * at any time after entry is convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial;

Section 19(a) of the Immigration Act of 1917, 39 Stat. 889, 8 U.S.C. (1946 ed.) Sec. 155(a), provided in relevant part as follows:

> Any alien * * * who is hereafter sentenced more than once to such a term of imprisonment [of one year or more] because of conviction in this country of any crime involving moral turpitude, committed at any time after entry * * * shall, upon the warrant of the Attorney General, be taken into custody and deported

STATEMENT

Petitioner submitted a preliminary application to file a petition for naturalization, Form N-400, to the New York Office of the Immigration and Naturalization Service on or about October 1, 1952. He was thereafter notified to appear with his witnesses for preliminary examination and, following completion of this examination, he filed his petition for naturalization on December 22, 1952 in the United States District Court for the Southern District of New York. An examiner was designated in accordance with applicable regulations and outside investigations of Petitioner's character and qualifications were made (R. 2). At that time, as at present, he was eligible for citizenship (R. 14).

The Immigration and Naturalization Service took none of the usual further steps to bring the petition on for final hearing. Instead, on June 22, 1953—six months and one day after the petition was filed—the Service instituted deportation proceedings against the Petitioner. At the same time that it refused to go forward with the final naturalization hearing, it pursued the deportation proceedings with extreme and unseemly haste: the deportation warrant of arrest was issued on June 22, 1953 (R. 3); served upon Petitioner the following day (R. 3); and the deportation hearing was commenced within twenty-four hours thereafter (R. 3, 6).

On July 28, 1953, Petitioner moved in the naturalization court (the District Court for the Southern District of New York) by an order to show cause for an order directing that his petition for naturalization be brought on for final hearing. That order to show cause also stayed the deportation proceedings (R. 1-2). After argument, the District Court denied Petitioner's motion and vacated the stay (R. 8-13). Appeal was promptly noted to the Court of Appeals for the Second Circuit and the District Judge ordered the deportation hearing stayed pending disposition of the appeal. On January 25, 1954, the Court of Appeals for the

Second Circuit issued its opinions and judgment affirming the decision of the District Court (R. 14-22). Thereafter it stayed the issuance of its mandate pending disposition of the case by this Court, and accordingly the deportation proceeding has remained stayed.

The deportation proceeding instituted against Petitioner is grounded upon Section 241(a)(4) of the Immigration and Nationality Act of 1952, 66 Stat. 204, 8 U.S.C. Sec. 1251(a)(4), which did not become effective until after his petition for naturalization was filed. The charge in the warrant of arrest was that Petitioner had been twice convicted of crimes involving moral turpitude (R. 8, 15).

Petitioner has not only conceded that he was twice convicted of such crimes, but indeed set this information out, as he was required to do, in his preliminary application to file a petition for naturalization (N-400). His N-400 and his petition for naturalization also show: that Petitioner was born in London, England, in 1895 and lawfully entered the United States for permanent residence in 1903 at New York City at the age of eight; that since the time of his entry, Petitioner has never departed from the United States; that in 1913, when he was seventeen years of age, and in 1915, when he was nineteen years of age, Petitioner was convicted of crimes involving moral turpitude for which he served terms in penal institutions; and that Petitioner has never been convicted of any other crimes.

At the time Petitioner was convicted—in 1913 and 1915—conviction for crimes was not a ground for deportation. Criminal convictions became a basis for deportation for the first time by Section 19(a) of the Immigration Act of 1917, 39 Stat. 889, 8 U.S.C. (1946 ed.) Sec. 155(a), but even this Act did not render Petitioner deportable since it was expressly limited by its terms as being applicable only to those aliens who were sentenced to imprisonment after its effective date. Because Petitioner's convictions occurred prior to 1917, that statute clearly did not apply to him.

Section 241(a)(4) of the Immigration and Nationality Act of 1952 carried forward from the old Section 19(a)

deportability based upon conviction for crimes. Because the word "hereafter" was omitted from Section 241(a)(4) and because the 1952 Act contains a new section 241(d), 8 U.S.C. Sec. 1251(d), making its provisions applicable to acts which occurred prior to its enactment, the Government has contended that Petitioner has now become amenable to deportation. Accordingly, if Petitioner was ever amenable to deportation, it was only by virtue of Section 241(a)(4) of the 1952 Act,[1] which became effective after his naturalization petition was filed. He was not liable to deportation at the time he filed his naturalization petition, nor at any time before (R. 8, 14).

In view of the broad savings clause contained in Section 405(a) of the Immigration and Nationality Act of 1952, 8 U.S.C.A. Sec. 1101, footnote — which provides that nothing contained in that Act should be construed to affect the validity of a petition for naturalization which was valid at the time the Act took effect, nor to affect any right in the process of acquisition, nor any proceedings pending on the effective date of the Act — Petitioner has contended that deportation proceedings which could be instituted against him *only* under the 1952 Act could not affect his right to a naturalization hearing where his petition for naturalization was filed and pending prior to the date the 1952 Act became effective.

The Immigration Service has argued that the priority provision contained in Section 318 of the Immigration and Nationality Act of 1952, 8 U.S.C. Sec. 1429 — which establishes a priority for deportation proceedings over naturalization proceedings and which prohibits a final hearing in naturalization if a deportation proceeding is pending — overrides Section 405(a) in this case and therefore justi-

[1] We do not believe that Section 241(a)(4) was ever intended or expected to apply to aliens in Petitioner's circumstances and it is our position that this provision is inapplicable to Petitioner. We do not press this contention here, however, since the issue is not directly germane to this proceeding.

fies the denial of a final naturalization hearing to Petitioner.

Resolution of these conflicting claims calls for a determination of the relationship between and the meanings of subsections (a) and (b) of Section 405. Subsection (a) by its terms is all inclusive: it provides that nothing contained in the 1952 Act shall be construed to affect valid petitions for naturalization, rights in process of acquisition, or proceedings pending at the time the Act took effect "unless otherwise specifically provided therein." Section 405(b) is a limited savings clause which provides only that any petition for naturalization pending at the time the 1952 Act took effect shall be heard and determined in accordance with the requirements of law in effect when such petition was filed, "except as otherwise specifically provided in title III." Section 318—a provision of title III of the 1952 Act—which prohibits final naturalization hearings where deportation proceedings are pending, does not specifically refer to Section 405(a); it does specifically refer to Section 405(b). Thus, Section 318 could be held to bar a final hearing if pending naturalization proceedings are governed by 405(b); but would not bar a final hearing if pending naturalization proceedings are governed by 405(a).

The District Court held that "section 405(b) is *the only* provision of the Immigration and Nationality Act of 1952 which, in pending [naturalization] cases, makes the old act applicable to the proceedings after the filing of the petition." (R. 12) (emphasis added). The Court of Appeals affirmed the ruling of the District Court, and also held that Petitioner's situation fell within Section 405(b) of the Act (R. 17-19). In a separate opinion, Judge Frank indicated that he had "strong doubts" about the construction placed upon these provisions by the Court; but despite these doubts, and "with much hesitation," Judge Frank concurred (R. 19-21).

SUMMARY OF ARGUMENT

I

Section 405(a) of the Immigration and Nationality Act of 1952 is a broad and comprehensive savings clause which provides that nothing contained in that Act should be construed to affect the validity of various matters and things which were valid and pending at the time the Act took effect; and provides that the old law shall continue to govern as to all such matters and things. Expressly mentioned as being within its coverage are petitions for naturalization, existing proceedings, and rights in process of acquisition—all of which apply to Petitioner in this case.

Except for the rulings of the Courts below, we are aware of no decisions which have held that Section 405(a), does not apply to naturalization petitions pending at the time the new Act went into effect. Indeed, many courts have gone further and held that aliens who had filed only the preliminary naturalization papers, but not the petition for naturalization itself, fall within the compass of Section 405(a). These decisions along with the decisions below create, as we have pointed out in our petition for certiorari (p. 16), "an anomaly in the application of the savings clauses to naturalization proceedings" since the protection of Section 405(a) has been accorded candidates for naturalization who have filed only the preliminary papers, but has been denied Petitioner who has done as much as they have—and more.

II

The rulings below that Petitioner did not come within the scope of Section 405(a) were prompted—not by anything contained in that provision—but because of two other sections of the Act: Section 405(b), which is a limited savings clause applicable only to naturalization proceedings; and Section 318, which prohibits a final naturalization hearing to a petitioner against whom deportation proceedings are pending, and which refers to Section 405(b).

In their application to this case, Sections 405(a) and 405(b) appear to bring about contrary results: if 405(a) applies, Petitioner would be entitled to a final naturalization hearing; but if 405(b) applies, a final hearing appears to be barred by Section 318. The Courts below resolved this conflict in favor of 405(b) because they felt, first, that the specific language of 405(b) rather than the general language of 405(a) should prevail in this situation; and second, because to do otherwise would render Section 405(b) redundant and of no effect.

By elevating 405(b) to a position superior to 405(a), the Courts below ignored the language of 405(a) — which, of course, is no more desirable than ignoring the language of 405(b). Moreover, by permitting the narrow and specific rather than the broad and general savings clause to govern, they seem to have reached a result completely contrary to the evident intention of Congress. Both the First and Fourth Circuits, when presented with this choice, resolved the conflict in favor of 405(a) because of its "broad" and "categorical" language, *United States* v. *Menasche*, 240 F. 2d 809, 811; and because the "implication" of Section 405(b) was not strong enough to negative the plain meaning of Section 405(a). *Petition of Pringle*, 122 F. Supp. 90, 92, aff'd. *sub nom. United States* v. *Pringle*, 212 F. 2d 878.

III

Nor does it appear that Section 318 can negate or override Section 405(a). Section 405(a) provides that nothing contained in the 1952 Act shall be construed to affect the validity of a naturalization petition filed or proceeding pending before the Act's effective date "unless otherwise specifically provided therein". Section 318 is, of course, contained in the 1952 Act, but does not specifically provide otherwise with regard to 405(a). Moreover since it mentions only 405(b) as the portion of Section 405 which would become inoperative when it clashes with 318, it discloses a

selective purpose not to refer to 405(a). And other sections of the Act indicate that where it was Congress' purpose to have Section 318 operate against petitions for naturalization filed before the effective date of the Act, it plainly said so and did not rely on mere implication.

The language and background of Section 318 indicate that it is purely a procedural provision neither creating nor restricting substantive rights, but establishing only an order of doing business: naturalization proceedings must await deportation proceedings. Petitioner's substantive rights as to naturalization were created by the laws in effect at the time his naturalization petition was filed, and these laws—under which Petitioner was entitled to a final naturalization hearing—are expressly continued in effect by Section 405(a).

IV

If Section 405(b) does apply in this case, then a careful reading indicates that Section 318 distinguishes between petitioners for naturalization against whom final findings of deportability have been issued and petitioners against whom deportation proceedings are merely pending. This is because Section 318 applies to petitioners against whom final findings of deportability have been issued "notwithstanding the provisions of Section 405(b)"; but makes no exception to the application of 405(b) with respect to petitioners against whom deportation proceedings are pending. And, of course, 405(b) saves prior law for pending naturalization proceedings just as much as 405(a) does in this case—so long as it does not require the application of 318.

The "notwithstanding" clause is new to Section 318 and was not contained in the provision of prior law from which it was taken, Section 329(c) of the Nationality Act of 1940, as amended. When the "notwithstanding" clause was added to the provision, a semicolon was also added separating petitioners with final findings of deportability from those with deportation proceedings pending. There had

been no such differentiation in prior law because there was no possibility of collision between the priority provision which was enacted in 1950 and the savings clauses which came into being in 1940. In the 1952 Act, where collision between the priority provision and the savings clauses was clearly possible, a distinction was made between the two types of petitioners.

V

If the arguments set out in the previous sections of this Brief do not resolve the questions presented in this case, then there is one method by which the three apparently antagonistic provisions may be read harmoniously; and under this construction, Petitioner is entitled to a naturalization hearing.

The present statutory scheme is clear that an alien who filed a naturalization petition subsequent to the effective date of the Act and against whom a deportation proceeding was commenced subsequent to the effective date of the Act, is barred from a final naturalization hearing by Section 318. Likewise, where an alien filed his naturalization petition prior to the effective date of the Act and a deportation proceeding was instituted prior to the effective date of the Act, a final naturalization hearing was barred by Section 329(c) of the Nationality Act of 1940, as amended.

But there is, as the Court below indicated "an interstice" where the naturalization proceedings were commenced under the old law and the deportation proceedings instituted under the new. (See Appendix A, *infra*, p. 38). Within this interstice, a distinction becomes necessary. Some of the deportation proceedings, though commenced under the new Act, are based upon grounds which were in the laws in effect at the time the naturalization petitions were filed, i.e., prior to the 1952 Act. In other cases in this interstice, the deportation proceedings instituted under the new law are based upon grounds available only under the new law and not available under the laws in effect at

the time the petitions were filed. (See Appendix A, *infra*, p. 38).

With regard to those cases where the deportation proceedings were commenced under the new law but on grounds which were also in effect in the old law, nothing contained in the new Act can be said to have affected the naturalization proceedings, for such petitioners were amenable to deportation under the law in effect when their petitions were filed. But with regard to those cases where the deportation proceeding is based upon grounds available only under the 1952 Act, petitioners with naturalization proceedings pending are decidedly affected by something contained in the 1952 Act since they were not amenable to deportation under the law in effect at the time their petitions were filed.

It is to that small group of cases within the interstice—where the deportation proceedings commenced under the 1952 Act could not have been instituted under prior law—that Section 405(a) would appear clearly to apply. The remainder of the group in the interstice—where the deportation proceedings commenced under the 1952 Act could have been commenced under prior law—do not fall within the compass of Section 405(a), but rather within the prohibition of Sections 405(b) and 318. (See Appendix A, *infra*, p. 38).

This is the only construction of these provisions which—in the context of this case—give meaning to all and also carries out the primary purpose of the savings clauses. All other constructions require the negation of one or another of the provisions involved and cause the anomalies and the contradictions so apparent in the decisions below.

ARGUMENT

I

Section 405(a) of the Immigration and Nationality Act of 1952 Applies to Naturalization Petitions Pending at the Time the Act Became Effective, and Prevents Anything in That Act From Affecting Petitioner's Naturalization Petition

The Immigration and Nationality Act of 1952, 66 Stat. 166 *et seq.*, 8 U.S.C. Sections 1101 *et seq.*, which went into effect on December 24, 1952, sought "to bring within one cohesive and comprehensive statute the various laws relating to immigration, naturalization, and nationality." H. R. Rept. No. 1365 (82nd Cong.), p. 27. In addition to codifying the existing laws on the subject, it effected numerous technical and substantive changes. *Id.* at 28. Accordingly, it also provided for the repeal of a great many statutory provisions which it rendered obsolete. *Id.* at 90; Sec. 403, Immigration and Nationality Act of 1952, 8 U.S.C.A. Sec. 1101, footnote.

Since legislation of this nature affects "the fate of millions of human beings in this country and abroad," H. R. Rept. 1365, *supra*, p. 27, and since every variety of proceeding, application, right, and condition which had been accruing or begun under the old laws could be affected by the changes introduced by the new law, savings clauses were enacted to protect these pending matters. Sec. 405, 66 Stat. 280, 8 U.S.C.A. Sec. 1101, footnote. These savings clauses made it plain that, as a general matter, it was the intention of the Congress that the new law should operate prospectively and that rights accruing or accrued under the old law should not be affected.

It is reasonably apparent that these savings clauses were adapted from the savings clauses contained in the Nationality Act of 1940, Sections 347(a) and (b), 54 Stat. 1168, 8 U.S.C. (1946 ed.) Sec. 747(a) and (b). See *Petition of Menasche*, 115 F. Supp. 434, 435-6 (D.P.R.), aff'd. *sub nom. United States v. Menasche*, 210 F. 2d 809 (C.A. 1), cert.

granted, No. 104, O. T. 1954. The main difference between the new savings clauses and the old is that the new provisions are broader. Thus, a comparison of Section 405(a) of the new Act with its predecessor "reveals that the savings clause contained in [the new Act] has been enlarged by the words, among others, of 'any status, condition, right in process of acquisition.'" *In the Matter of D. L.*, A-5634929, 2-5-53, Int. Dec. #435, Board of Immigration Appeals. This enlargement appears to have resulted from Congress' desire to adopt the views of the Court of Appeals of the District of Columbia in *Bertoldi* v. *McGrath*, 178 F. 2d 977, rather than the views of the Court of Appeals for the Second Circuit in *United States ex rel. Abercastari* v. *Cain*, 147 F. 2d 449. See *Petition of Menasche*, *supra*, at 435-6; *In re Jocson*, 117 F. Supp. 528, 530 (D. Haw.).

The meaning and scope of these added words is at the heart of the issue in *United States* v. *Menasche*, No. 104, O. T. 1954, and is involved also in *Petition of Pringle*, 122 F. Supp. 90 (E.D. Va.), aff'd. *sub nom. United States* v. *Pringle*, 212 F. 2d 878 (CA 4); and *In re Jocson*, *supra*. In these cases the question is whether the filing, prior to the effective date of the new Act, of a Declaration of Intention or a Form N-400—which are the documents submitted prior to the filing of the petition for naturalization—accorded to an alien a right in process of acquisition or a status within the protection of Section 405(a). In the instant case, since the Petitioner actually filed a petition for naturalization prior to the effective date of the Act, this issue is not involved; and accordingly, we face squarely the question of whether Section 405(a) applies to naturalization petitions.

It is inconceivable that any question could be raised, when Section 405(a) is read alone, regarding its applicability to a petition for naturalization which was pending

at the time the Immigration and Nationality Act of 1952 became effective.

Certainly the words of the provision clearly so indicate.[2] The provision expressly refers to a petition for naturalization valid at the time the Act took effect, and provides that nothing in the Act should be construed to affect its validity; and also provides that as to such "matters" the old law shall remain in effect. Moreover, since Section 405(a) expressly applies to "any proceedings" brought before the Act took effect, and since the filing of a petition for naturalization commences a "proceeding," *Tutun* v. *United States*, 270 U. S. 568, a filed petition for naturalization falls within the compass of Section 405(a) for this additional reason. And finally, while there may be some question as to whether an alien who has filed only a Declaration of Intention or a Form N-400 acquires a right in process of acquisition, there can be no question that the filing of the petition for naturalization itself brings into being such a right. *Tutun* v. *United States*, *supra*.[3] We think it beyond dispute that Section 405(a) on its face applies to a valid naturalization petition pending when the Act became effec-

[2] Nothing contained in this Act * * * shall be construed to affect the validity of any * * * petition for naturalization * * * which shall be valid at the time this Act shall take effect, or to affect any * * * proceedings * * * brought, or any status, condition, right in process of acquisition, * * * done or existing, at the time this Act shall take effect; but as to all such * * * proceedings, * * * conditions, rights, * * * things * * * matters, the statutes or parts of statutes repealed by this Act are * * * hereby continued in force and effect.

[3] "there is a statutory right in the alien to submit his petition and evidence to a court, to have that tribunal pass upon them, and, if the requisite facts are established, to receive the certificate." 270 U.S. at 578. And see opinion of the Court below, R. 17.

tive; and we know of no case holding otherwise except the decisions below.[4]

II

If Section 405(a) and 405(b) Conflict in Their Application to a Naturalization Petition Filed Prior to the Effective Date of the Act, Section 405(a) Must Prevail If the Primary Purpose of the Savings Clauses Is to be Effectuated

The Courts below concluded that Petitioner's naturalization petition did not fall within the purview of Section 405(a), not because of anything which appears in that provision, but by reading other provisions of the Act. They noted that Section 405(b) also applied to naturalization petitions and they took into account Section 318 which refers to Section 405(b); and by applying these two provisions, held that Section 405(a) did not apply to Petitioner's naturalization petition, or merely ignored Section 405(a) altogether.

The District Court seems to have based its conclusion on the fact that since 405(b) applied only to naturalization petitions, and 405(a) applied to naturalization petitions and other things as well, the broad and general language of 405(a) must give way to the specific and narrow language of 405(b) (R. 12-13).

[4] In *United States* v. *Cunha*, 209 F. 2d 326, at 328-9, where the First Circuit applied 405(b) to a naturalization petition pending before the new Act became effective, there was no need to consider the meaning or application of 405(a), since 405(b) was sufficient to save the petition. When the First Circuit was compelled to consider Section 405(a), it held it applicable to an alien who had filed a declaration of intention. *United States* v. *Menasche*, *supra*; and this would appear to apply *a fortiorari* where the alien has filed the naturalization petition itself.

The Court of Appeals solved the problem by reasoning in reverse. It held that if Petitioner's naturalization petition was saved under Section 405(a), Section 405(b) would be without significance and would be redundant. To avoid this, it concluded that Petitioner came within 405(b); thereby rendering the language in 405(a) without significance, which was the very thing it refused to do to Section 405(b) (R. 17-19).

When this construction was urged upon the Court of Appeals for the First Circuit, it was unequivocally rejected:

> "Subsection (a) of § 405, however, is broad and sweeping in its terms. Indeed it is so comprehensive that subsection (b) seems redundant. See *Shomberg* v. *United States*, decided by the Court of Appeals for the Second Circuit January 25, 1954, 210 F. 2d 82. But however that may be, subsection (a) provides categorically that 'Nothing contained in this Act, unless otherwise specifically provided therein, shall be construed to affect the validity * * * (etc.)' ". *United States* v. *Menasche*, 210 F. 2d at 811.

Similarly, the District Court for the Eastern District of Virginia stated:

> "Although subsection (b) of the savings clauses, supra, does affirmatively declare that the 1940 Act shall govern pending petitions, its implication is not strong enough to negative the equally plain intent of subsection (a) * * * ." *Petition of Poingle*, 122 F. Supp. at 92.

And this reasoning was affirmed by the Court of Appeals for the Fourth Circuit. *United States* v. *Poingle*, 212 F. 2d 878.

The Government has advanced still another reason for taking pending naturalization petitions out of 405(a) and placing them under 405(b). Its rationale hinges upon the phrase "unless otherwise specifically provided therein"

which is contained in 405(a). The contention is that 405(b) is a provision which otherwise specifically provides as to naturalization petitions and accordingly removes these petitions from 405(a).[3] But the difficulty with this position is that there is nothing in 405(b) which *specifically* provides otherwise with regard to 405(a).[4] No mention of 405(a) is made in 405(b); only a reference to title III appears in 405(b). In view of their proximity and relationship, Congress could not have overlooked 405(a) in enacting 405(b); and the fact that 405(b) cross refers to title III discloses that Congress was aware of the need for specific cross references. And it is also plain from other sections of the Act, that when Congress wished to *specifically* provide otherwise, it plainly said so and did not rely on implication. Compare Sections 328(b)(2) and 336(c), 8 U.S.C. Sections 1439(b)(2) and 1447(c); Sections 329(b)(5) and 336(c), 8 U.S.C. Sections 1440(b)(5) and 1447(c); Sections 327(a) and 327(b), 8 U.S.C. Sections 1438(a) and 1438(b); and cf. *United States ex rel. De Luca* v. *O'Rourke*, 213 F. 2d 759, 764-5 (CA 8).

But the fundamental weakness in all of these rationales which hold that 405(b) rather than 405(a) governs, is that they require that the broad, comprehensive and sweeping language of 4 [illegible] 1) give way to the narrow and specific language of 405(b). Certainly a comparison of these provisions makes it manifest that the emphasis of Congress was contrariwise. It seems reasonably clear that Section

[3] Petition for writ of certiorari, No. 104, O.T. 1954, *United States* v. *Menasche*, p. 8. But compare *Petition of Menasche*, *supra*, at 436, where the Government appears to have conceded otherwise.

[4] The predecessor to Section 405(a), Section 347(a) of the Nationality Act of 1940, *supra*, contained the phrase "unless otherwise provided therein"; the word "specifically" was added to the phrase when it was included in 405(a). Such an addition reflects a clear purpose to require a specific provision otherwise, not a vague one.

405(b) is limited to the single purpose of declaring the substantive law of naturalization which is to govern petitions pending at the time the 1952 Act became effective. Cf. *In re Skoglund*, 46 F. Supp. 434, 436 (D. Minn.). Thus Section 405(b) in this case would require the use of the criteria for naturalization set out in Section 310(a) of the Nationality Act of 1940, 8 U.S.C. (1946 ed.) Sec. 710(a) the provision under which the petition was filed—rather than the criteria of Section 319(a) of the 1952 Act, 8 U.S.C. Sec. 1430(a), which superseded it. In this regard, for example, the old law required a residence period of one year, while the new law requires three years of residence. Section 405(b) would continue the one year residence requirement in this case.

The purpose of Section 405(a) is far broader than the limited purpose of 405(b). Section 405(a) is a catch-all savings clause which seeks to prevent any of the defined rights accruing or accrued under the old law either by an alien or by the Government from being disturbed by the new law. Thus Section 405(a), unlike Section 405(b), twice uses the word "affect," in the sense of affecting the "validity" of an action or proceeding or document; and its enumeration of the types of things which it encompasses and therefore saves—"any prosecution, suit, action or proceeding, * * * or any status, condition, right in process of acquisition, act, thing, liability, obligation, or matter, civil or criminal, done or existing"—could hardly be more inclusive or broad. It is clear that the purpose of this provision was to save from defeat by changes in the new law any of the enumerated types of matters which were valid under the old law. And it seems reasonably apparent that the draftsmen of Section 405(a) availed themselves of every known applicable word in order to insure that matters *antecedable as well as foreseeable* would fall within the scope of the provision. See *Ex parte Robles-Rubio*, 119 F. Supp. 610, 613-14 (N.D. Calif.). It is for this reason that Section 405(a) has been described as being a savings

clause of "unusual breadth," *Ex parte Robles-Rubio*, *supra*, at 613, containing "strong language", *Heikkila v. Barber*, 216 F. 2d 407, 409 (C.A. 9) (concurring opinion) and the similar provision of the earlier statute was characterized as being "about as broad as language could be" *Bertoldi v. McGrath*, *supra*, at 978; and "the broadest possible language," *United States ex rel. Aberasturi v. Cain*, *supra*, at 452 (dissenting opinion). See also *Petition of Menasche*, *supra*, at 437.

It would be strange indeed for Congress to use the "broadest possible language", to enlarge a provision already characterized as being "as broad as language can be", and expressly to state that there could be no exceptions unless *specifically* so provided—indeed, do all in its power to extend protection to rights accrued at the time the Act became effective; and then at one and the same time prejudice and limit these rights by expecting a vague implication to be drawn from a provision which satisfies none of the requirements it established.

The situation presented in the instant case is one for which the Immigration and Nationality Act of 1952 has apparently made no precise provision. If Petitioner's naturalization petition is held to fall within the scope of Section 405(a), an entirely different result may ensue than if it is held to fall within the scope of Section 405(b) and Section 318. If Congress had foreseen and considered this possibility, it undoubtedly would have made provision for it. But the danger in any comprehensive codification of a complex body of law, is that situations may subsequently arise which the codifiers could not foresee.

It was to prevent just such unforeseen situations from "affecting" rights accrued under the old law, that Section 405(a) was obviously fashioned.[7] Its language is compre-

[7] "The breadth of the savings clause is indicative of the Congressional awareness that the 1952 Act would inevitably have unforeseen effects upon preexisting statuses and conditions, and the Congressional desire to avoid such effects in so far as possible." *Ex parte Robles-Rubio*, *supra*, at 613-14

hensive and all embracing; its application is absolute; and it provides expressly that there will be no exceptions to its terms unless specific provision for such exception is made. It is like a broad net into which aliens and the Government can fall if the provisions of the new law should topple them from the perches which they reached under prior law. That net has been strongly laced and widely strung not merely to save the rights and proceedings and matters which Congress knew in advance would be affected, but also—and especially—to save those things which might be disturbed and which Congress may have overlooked.

In this case, where Section 405(a) and 405(b) appear to have conflicting applications, we believe that Section 405(a) must prevail if the primary purpose of the savings clauses is to be effectuated.

III

Since Section 318 of the Immigration and Nationality Act of 1952 Is Merely a Procedural Provision and Does Not "Otherwise Specifically Provide" as to Section 405(a), It Does Not Prevent a Final Hearing on Petitioner's Naturalization Petition

As the District Court has indicated, Section 318 of the Immigration and Nationality Act of 1952, 66 Stat. 244, 8 U.S.C. Sec. 1429, grew out of the fact that in numerous cases, an alien subject to deportation was also eligible for naturalization. This situation sometimes led to a race between the Government and the alien, the Government seeking to effectuate deportation and the alien to obtain naturalization (R. 8-9). In some instances, after the deportation proceeding had commenced, the alien began a naturalization proceeding, and then attempted to use the latter to delay or defeat the former. E.g. *U. S. ex rel. Walther v. District Director*, 175 F. 2d 693, 189 F. 2d 517 (CA 2). This resulted, according to the District Court, in the enactment in 1950 of Section 27 of the Internal Security Act as an amendment to Section 329 of the Nationality Act of 1940,

64 Stat. 1015.[8] This provision, in turn, with minor modification was carried over as Section 318 of the 1952 Act.[9]

On the basis of this recapitulation, the District Court concluded that from the time of "the adoption of the priority provision it is within the power of the Attorney General, by the institution or withholding of deportation, either to stay an alien's naturalization proceedings and deport him or let him proceed to the safe refuge of a certificate of naturalization". (R. 9). This conclusion, however, fails to come to grips with the problem in this case. For, while no one denies that the priority provision gives power to the Attorney General to stay naturalization proceedings by instituting deportation, the question here presented is whether, in view of Section 405(a), he can do so where the naturalization proceeding has been instituted at a time when there was no statute which made the alien amenable to deportation. There is no indication in Section 318 that the Attorney General is authorized to utilize a provision in the new law to stay naturalization proceedings instituted

[8] Section 329 of the Nationality Act of 1940, as amended by Section 27 of the Internal Security Act of 1950, 8 U.S.C. (1946 ed. Supp.) Section 729(c), provides in relevant part as follows:

> (c) * * * No person shall be naturalized against whom there is outstanding a final finding of deportability, and no petition for naturalization shall be finally heard by a naturalization court if there is pending against the petitioner a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this or any other act. * * *

[9] The District Court's review is as reasonable as any. The legislative history of the provision is sparse: It seems first to have appeared in S. 1832 (81st Cong.) and the committee report on that bill indicated merely that the section "provides assurance that the removal of subversive aliens shall not be stayed by naturalization proceedings." S. Rept. 2230 (81st Cong.) p. 9. This bill, after passage by the Senate, died in the House. But the provision was resurrected as Section 27 of S. 4037 (81st Cong.) which later became the Internal Security Act of 1950. All subsequent committee reports refer to the provision in its own terms. S. Rept. 2369 (81st Cong.) pp. 15-16; H.R. Rept. 3112 (81st Cong.) pp. 61-62; S. Rept. 1137 (82d Cong.) p. 45; H.R. Rept. 2096 (82d Cong.) p. 129. See also *United States ex rel. Walther* v. *District Director*, *supra*.

and valid under the old law. Indeed, every indication is to the contrary: the Attorney General may stay naturalization proceedings by the institution of deportation only where the deportation can be instituted under the law in effect when the naturalization proceeding was instituted.

The language of Section 318 and its background indicate that it was designed wholly as a procedural, not a substantive provision. It established an order of doing business: naturalization proceedings must await deportation proceedings. It neither creates nor restricts substantive rights. So far as Petitioner's substantive rights are concerned, they were created under the law in effect at the time his petition was filed—the Nationality Act of 1940 and the Immigration Act of 1917—and these are saved by virtue of Section 405(a) of the present law.

Section 405(a), by its terms, declares that "nothing contained in this Act *unless otherwise specifically provided therein*" shall be permitted to affect the validity of a petition for naturalization valid and pending at the time the Act takes effect. Section 318 does not "specifically provide otherwise." Indeed, its specific reference to Section 405(b) and its lack of any reference to Section 405(a) indicates that there was no intention that Section 318 should interfere with the meaning and mandate of Section 405(a).

Judge Frank, concurring below, sets out this position succinctly:

> "Section 318 specifically mentions Sec 405(b) as the sole part of Sec. 405 which is to be inoperative when it clashes with Sec. 318. This reference to clause (b) discloses a selective purpose, *i.e.*, not to refer to Sec. 405(a). Moreover, Sec. 405(a) by its express terms provides, 'Nothing contained in this Act, *unless otherwise specifically provided therein*, shall be construed * * * to affect any * * * right in process of acquisition * * * ; but as to all such * * * rights * * * the statutes or parts of statutes repealed by this Act are, *unless otherwise specifically provided therein*, hereby continued in force and effect * * * .' It would seem, then, that to apply Sec. 318 to 'rights in process of acquisi

> tion' is exactly what both Sections 318 and 405(a) deliberately said we must not do, since such an application not only (1) disregards the explicit and selective reference in Sec. 318 to Sec. 405(b) but also (2), reading Sec. 318 into Sec. 405(a) by mere implication, disregards the words in Sec. 405(a) 'unless specifically provided therein.' It is noteworthy, too, that the phrase 'rights in process of acquisition' in Sec. 405(a) is new; it was not in the savings clause of the 1949 [sic] Act; it thus appears that Congress intended to broaden this savings provision. See *Petition of Menasche*, 115 Fed. Supp. 434, 436." (R. 20).

As further reinforcement of this view, we respectfully direct attention to Section 330(b) of the 1952 Act, 66 Stat. 251-2, 8 U.S.C. Sec. 1441(b). This Section, as Judge Frank noted, "contains striking evidence that, when Congress meant to have Sec. 318 apply retroactively—*i.e.*, to naturalization petitions pending at the time the 1952 Act became effective—Congress plainly said so and did not rely on mere implication." (R. 20-21).

The full text of that provision is set out in the margin.[10]

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[10] Section 330(b) of the Immigration and Nationality Act of 1952, 66 Stat. 251-2, 8 U.S.C. Sec. 1441(b), provides as follows:

> (b) Any person who was excepted from certain requirements of the naturalization laws under section 325 of the Nationality Act of 1940 prior to its amendment by the Act of September 23, 1950, and had filed a petition for naturalization under section 325 of the Nationality Act of 1940, may, if such petition was pending on September 23, 1950, and is still pending on the effective date of this Act, be naturalized upon compliance with the applicable provisions of the naturalization laws in effect upon the date such petition was filed: *Provided*, That any such person shall be subject to the provisions of section 313 and to those provisions of section 318 which relate to the prohibition against the naturalization of a person against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this or any other Act, or which relate to the prohibition against the final hearing on a petition for naturalization if there is pending against the petitioner a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this or any other Act

In essence, the first portion of Section 330(b) is a savings clause for a particular category of aliens whose petitions for naturalization were filed prior to the effective date of the 1952 Act, since it grants to this category the benefits of prior law. The second portion of Section 330(b), by expressly providing that Section 318 shall apply to aliens in this category, makes it clear, however, that any aliens in this category against whom a deportation proceeding is pending or against whom there is outstanding a final finding of deportability, may not have the benefit of the prior law. This provision is graphic illustration that where the draftsmen desired to make Section 318 operate with respect to petitions filed under prior law, they knew precisely how to accomplish their purpose.

The Court below felt that Section 330(b) did not hold the significance which we attach to it because the "draftsman there was faced with a narrow problem, and the impact of all related sections was immediately foreseeable." (R. 19). With deference, we cannot see how this constitutes an answer. By making reference in Section 318 to Section 405(b), the draftsman plainly indicated an awareness of the relationship betwen the savings clauses and Section 318. Not only did he except 318 from the impact of 405(b), but by selecting 405(b), obviously indicated an intention not to except 318 from the impact of 405(a). Certainly, the impact of 405(a) upon 318 was just as visible as the impact of 405(b).

We believe that the interdict of Section 405(a)—that nothing in the 1952 Act can be construed to affect the validity of a petition for naturalization, a proceeding, or a right in process of acquisition—applies directly and clearly to Section 318; since there is nothing in 318 which specifically provides otherwise. Accordingly, since Petitioner was not deportable when his naturalization petition was filed and no warrant was outstanding nor proceeding pending against him, nothing in the 1952 Act—whether 241(a)(4) or 318, or both—can be construed to defeat his right to a final naturalization hearing.

IV

If Section 405(b) Applies in This Case, Then Section 318 Distinguishes Between Petitioners Against Whom Final Findings of Deportability Are Outstanding and Petitioners Against Whom Deportation Proceedings Are Pending. With Respect to the Latter Group, Section 318 Does Not Bar a Final Naturalization Hearing

In Part II, *supra*, we have set forth our contention that in the event that Sections 405(a) and 405(b) conflict in their application to this case, Section 405(a) should prevail. In Part III, *supra*, we have set forth the reasons why we believe that Section 318 does not bar Petitioner's final naturalization hearing. In each instance, we have concluded that Section 405(b) does not control this proceeding.

If the language in Section 405(a) is ignored, however, and Section 405(b) is read along with Section 318, an argument can be made that a final hearing is barred. But this contention, we believe, misreads and misapplies these provisions.

A comparison between Section 318 as it appears in the 1952 Act and its predecessor, Section 329(c) of the Nationality Act of 1940, as amended, reveals that Section 318 differs from the earlier provision in two important respects: it contains a "notwithstanding" clause which the earlier provision did not; and it is punctuated by a semicolon, whereas the earlier provision was divided by a comma.

We believe that the inclusion of the clause beginning with the word "notwithstanding" is clear indication that the draftsmen were aware and had the intention that Section 318 necessarily had to be construed in the light of the savings clauses. For the same reason, the provision of the 1950 Act contained no "notwithstanding" clause because it did not have to be read with any savings clauses, since none were in operation in 1950.

We also believe that the substitution of a semicolon for the comma was made with the purpose of separating that

which precedes the semicolon from that which follows it. Specifically, it is our position that since the "notwithstanding" clause imposes a limited exception on the effect of the savings clauses, the purpose of the semicolon was to separate that part of 318 which was within the savings clauses from that part of 318 which was within the limited exception to the savings clauses.

The relevant portion of Section 318 provides as follows:

> " " " Notwithstanding the provisions of section 405(b), " " " no person shall be naturalized against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this or any other Act; *and no petition for naturalization shall be finally heard by a naturalization court if there is pending against the petitioner a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this or any other Act:*

It is readily apparent that the instant case is governed by the italicized portion of the provision. There has been no final finding of deportability but there is a deportation proceeding pending.

It also seems apparent that the "notwithstanding" clause does not apply to the italicized section of the provision following the semicolon, but rather only to that portion which precedes it. We therefore conclude that Petitioner is governed by the italicized portion of the provision and is fully within the scope of the savings clauses.

The legislative history of Section 318 reinforces this view. The language of Section 318 first came into the law as an amendment to Section 329 of the Nationality Act of 1940, when it was enacted as Section 27 of the Internal Security Act of 1950. This provision, as we have noted, had neither a "notwithstanding" clause nor a semicolon since there were no savings clauses with which to be concerned.

In one of the earliest drafts of what was later to become the Immigration and Nationality Act of 1952, language identical to that of Section 27 of the Internal Se-

urity Act of 1950 was used. There was no "notwithstanding" clause and no semicolon. Section 317, S. 3455 (81st Cong. 2d Sess.) as introduced by Senator McCarran. But when, in a later version, the "notwithstanding" clause was added to the section, the comma appears to have been changed to a semicolon. Section 318, S. 2550 (82nd Cong. 2d Sess.) as reported by Senator McCarran. See also Section 318, Amendment to H.R. 5678, dated May 22, 1952 (82nd Cong. 2d Sess.) (in the Senate of the United States).

What then, it may be asked, is the meaning of the italicized portion of the provision? If it does not apply to Petitioner, to whom does it apply? The answer, we believe, is that it applies only to those petitioners who filed petitions after the 1952 Act became effective and against whom deportation proceedings are pending. As to petitioners who filed petitions prior to the effective date of the 1952 Act and against whom deportation proceedings are pending, the savings clauses bring into effect the prior law, and it becomes necessary to determine whether the deportation proceedings had been instituted under that prior law. "Ordinarily statute establish rules for the future, and they will not be applied retroactively unless that purpose plainly appears." *Brewster* v. *Gage*, 280 U.S. 327, 337. The savings clauses make apparent "a clear intent on the part of Congress that the new act should take effect prospectively." *Bertoldi* v. *McGrath*, *supra*, at 978. In that portion of Section 318 which is applicable to Petitioner, there is no indication that it was intended to apply other than prospectively.

The District Court, in rejecting this construction, indicated that it did not wish to accord the effect to the changed connotation which Petitioner attributes to it because of the "lack of any explanation for a desire of Congress to change the previous statutory scheme" (R. 11). But in the previous statutory scheme—i.e., Section 329(c) of the Nationality Act of 1940, as amended,—there was no savings clause problem to contend with; and in that scheme

the priority provision made no reference to any savings clause and accordingly did not need to distinguish between petitioners against whom deportation proceedings were pending and petitioners against whom final findings of deportability had been issued. In the new priority provision—Section 318 of the 1952 Act—there was a savings clause problem, as the reference to Section 405(b) makes clear; and accordingly the new provision instituted the distinction.

The Court of Appeals indicated that Petitioner's reading of Section 318 "might be justified if there were any indications in the general scheme of the provisions or in the legislative history to lend support." (R. 17). In the absence of such indications, however, the Court below was "not constrained to grant such substantive effect to so minor and ambiguous a punctuational variation." (R. 17). Whether the punctuational variation is "minor" or "ambiguous" depends, of course, on whether it will be given effect or ignored. If it is given effect in this case, it can hardly be denominated "minor", and certainly, it is not "ambiguous." But the main difficulty with the Court's reasoning is that it refused to take the statute as it found it and failed to apply the time-honored rule that "'every act, upon consideration of all the parts thereof together, is the best expositor of itself'." *Pennington* v. *Coxe*, 2 Cranch. 33, 37.

Petitioner recognizes that punctuation alone is not an infallible guide to the construction of statutes, but as this Court has noted: "Punctuation * * * is, however, not without force". *Northern Pacific Ry. Co.* v. *United States*, 227 U.S. 355, 360. In this case, the changed punctuation blends into the statutory scheme and permits superficially antagonistic provisions to be read coherently and harmoniously. In the absence of some better or more harmonious construction, it should be given effect and should not be lightly brushed aside.

V

There Is One Method by Which Sections 405(a) and 405(b) and 318 May Be Construed Harmoniously, and Under This Construction Petitioner Is Entitled to a Final Naturalization Hearing

If the previous sections of the Brief do not resolve the questions presented in this case to the Court's satisfaction, there is one method by which Sections 405(a) and 405(b) and Section 318 may be construed so that all may be given effect.

It would appear established that prior to the effective date of the Immigration and Nationality Act of 1952, an alien who had filed a petition for naturalization under the then existing law, and against whom a deportation proceeding was commenced under the then existing law, would be barred from a final naturalization hearing by virtue of Section 329(c) of the Nationality Act of 1940, as amended. *Banks* v. *United States*, 204 F. 2d 583 (C.A. 5). It also appears settled that an alien who has filed a petition for naturalization under the 1952 Act, and against whom a deportation proceeding was instituted under the 1952 Act, would be barred from a naturalization hearing by virtue of Section 318 of the 1952 Act. *Application of Chin King*, 124 F. Supp. 911 (S.D. N.Y.). See Appendix A, *infra*, p. 38.

The problem arises where the alien has filed his petition for naturalization under prior law and the deportation is instituted under the new law. The Court below termed this an "interstice covering the narrow category of cases where naturalization was commenced under the old law and deportation is attempted under the new". (R. 17). But the Court below failed to note a very important distinction with regard to the narrow category of cases filling this interstice; in some instances the deportation proceeding, though commenced under the new law, is based upon grounds which were also present in the old law; whereas in other instances, the deportation proceeding commenced under the new law could not have been insti-

tuted under the old law because the grounds upon which it is based were not available under the old law. See Appendix A, *infra*, p. 38.

If this distinction is recognized, then a construction of the three statutory provisions involved in this case can be made by which all of the provisions acquire meaning, and all can be read harmoniously.

First, let us examine those cases in the "interstice" where the ground for the deportation proceeding commenced under the new Act was also a ground for deportation under prior law. The aliens in these cases have not—in any real sense—been affected by anything contained in the new Act. They have been affected by a deportation proceeding which was instituted under the new Act, but which *could have been* instituted under the old law if the Attorney General had the inclination or the time to do so. But they have not been affected by anything "contained" in the new Act, for the same provision was in the prior law.[11] Their naturalization hearings, we believe, would properly be barred under Section 318, when read with Section 405(b); and Section 405(a) would not apply. See Appendix A, *infra*, p. 38.

On the other hand, with regard to those cases in the interstice, where the deportation proceeding was commenced under the new Act upon grounds which were not contained in the old law—such as this case—the alien decidedly *is affected* by something "contained" in the new Act. No deportation proceeding could have been commenced against him under the law in effect when his naturalization petition was filed; and it is only by virtue of something contained in the new Act that his naturalization proceeding may be affected. If the language of Section 405(a) is to be given its ordinary significance, this appears

[11] Section 405(a), it should be noted, prohibits anything "contained" in the new Act from affecting the matters commenced under the old; it does not prohibit anything "done" under the new Act from affecting matters commenced under prior law.

to be precisely what it provides shall not occur; and in this limited situation the bar of Sections 318 and 405(b) cannot apply.

The references in Section 318 to warrants of arrest "issued pursuant to the provisions of this or any other Act" underscore this differentiation. Since, as we have noted, the Immigration and Nationality Act of 1952 replaced all existing legislation dealing with immigration and naturalization and repealed all prior legislation on the subject, *supra*, p. 14, any warrant of arrest issued after its effective date is a warrant of arrest issued under the provisions of the 1952 Act. By the same token, any warrant of arrest issued prior to its effective date is a warrant of arrest issued under "any other act." Moreover, every alien who was deportable under earlier laws had not been served with a warrant of arrest prior to the effective date of the 1952 Act. Many such aliens have been served with warrants since the new Act became effective or will be served hereafter; and these warrants have been and will be issued under the 1952 Act. But of critical importance, some will be issued on grounds in existence prior to the 1952 Act and others will be issued on grounds available for the first time under the 1952 Act. Under our view, Section 405 (a) saves a petition for naturalization where the warrant has been issued on new grounds in the 1952 Act and it is only the warrants issued on the prior grounds to which Sections 318 and 405(b) have reference.

This is the only construction which gives effect to Sections 405(a) and 405(b) and 318, and also carries out the primary purpose of the savings clauses. To construe these sections otherwise would be to say that Congress intended to apply the law in effect at the time a petition was filed (i.e., Section 405(a)), and at the same time authorize the negation of that law through the commencement of deportation proceedings on grounds not in effect when the petition was filed (i.e., Section 318). "A construction that creates an inconsistency should be avoided when a rea-

sonable interpretation can be adopted which will not do violence to the plain words of the act, and will carry out the intention of Congress." *United States* v. *Reamer*, 303 U.S. 540, 547.

The only manner in which Sections 318 and 405(a) and 405(b) can be read to supplement and not to contradict each other within the context of this case is to say that the warrants of arrest issued under the 1952 Act or any other Act must be based on grounds in effect at the time the petition for naturalization was filed. Under this view, a warrant issued pursuant to 241(a)(4) of the 1952 Act for the deportation of the Petitioner would not be of a nature sufficient under the law to bar his naturalization.

The Court below failed to consider this construction although it was properly raised there. The District Court rejected it with the observation:

> "While that might have been an intelligible legislative scheme, Congress used no words to indicate that that was its intention. To read it into the statute would be judicial legislation." (R. 10)

We respectfully disagree that there is any burden upon the Petitioner to demonstrate that this "intelligible scheme" was Congress' "intention." On the contrary, it is a well recognized rule of statutory construction, as we have noted that " every act, upon consideration of all the parts thereof together, is the 'best expositor of itself.'" *Pennington* v. *Coxe*, 2 Cranch, 33, 37. Indeed, in ascertaining the intention of the legislature, this Court has long ago indicated that "the whole statute must be examined. Single sentences and single provisions are not to be selected and construed by themselves, but the whole must be taken together." *Pollard* v. *Bailey*, 20 Wall. 520, 525 e. This Court has also established as "a general rule, without exception, in construing statutes, that effect must be given to all their provisions if such a construction is consistent with the general purposes of the act

and the provisions are not necessarily conflicting. All acts of the legislature should be so construed, if practicable, that one section will not defeat or destroy another * * *" *Bernier* v. *Bernier*, 147 U.S. 242, 246. And also: "'One part of a statute must be so construed by another that the whole may, if possible, stand * * *'; or, as otherwise expressed, that every clause in a statute should have effect, and one portion should not be placed in antagonism to another." *United States* v. *Laudram*, 118 U.S. 81, 85.

The construction which Petitioner urges for harmonization of these apparently antagonistic provisions is the only one which gives meaning to all and also retains the significance of Section 405(a). Contrariwise, the construction adopted by the Courts below results, in practical effect, in the complete negation of Section 405(a). "The process of interpretation * * * misses its high function if a strict reading of a law results in the emasculation or deletion of a provision which a less literal reading would preserve." *Markham* v. *Cabell*, 326 U.S. 404, 409.

In rejecting the construction urged by Petitioner, the Court below recognized that its conclusion seemed "harsh" (R. 19), but apparently consoled itself by noting that the interpretation it adopted had "at least the virtue of promoting consistency of treatment of the aliens". (R. 19). We cannot see how harsh treatment is ever a virtue, whether consistent or not. But more important, if the savings clauses indicate anything, they indicate that it was not Congress' intention that on the effective date of the new Act all aliens would be treated consistently or alike, without regard to the statuses or rights which may have inured to them under prior law. Indeed, when the Government argued that a construction of the savings clauses should be avoided "because it would leave the law as to the naturalization of aliens unsettled for many years to come", *United States* v. *Menasche*, *supra*, at 812, the First Circuit replied: "This may be so, but the argument

should be addressed to Congress. The words of the statute lead clearly to the result we have reached." *Ibid.* Chief Judge Magruder, concurring, underscored this reply:

> "It is not apparent to me how our interpretation of the statute will result in 'unsettling' the law relating to naturalization for many years. The only result will be—and this is quite a different thing—that the provisions of the 1940 Act will continue to govern a greater number of cases than the government would like, and that provisions of the 1952 Act will not be fully applicable for a greater period than the government would like. For all we know, the Congress in so providing may have had in mind the equities of a situation like the present, where, at the date the 1952 Act went into effect, the petitioner had arrived almost at the threshold of American citizenship, following faithfully the procedures for acquiring a right to naturalization under the 1940 Act. We are naturally loath to accept the government's contention that the Congress intended to slam the door in the face of such an applicant for citizenship and to make him start all over again." 210 F. 2d at 812.

These observations apply with even greater force here since the instant Petitioner—who has resided in this country for over 50 years—is being threatened not merely with a denial of naturalization, but with deportation. If Shomberg fails to achieve naturalization, he will probably not—like Menasche—be able to "start all over again". Moreover, Shomberg has not only faithfully followed the *preliminary procedures* to accomplish naturalization before the new Act became effective, but had in fact filed his naturalization petition. If Menasche "had arrived almost at the threshold of American citizenship", then Shomberg was almost through the door.

We believe that under these circumstances, this Court should be no less "loath" than the First Circuit "to accept the government's contention that the Congress intended to slam the door in the face of such an applicant for citizenship * * *."

CONCLUSION

For the reasons set forth above, it is respectfully submitted that the decision below should be reversed, and Petitioner's motion for an order directing that his petition for naturalization be brought on for final hearing and that the deportation proceedings pending against him be stayed until the adjudication of his petition, should be granted.

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January 3, 1955

APPENDIX A

Naturalization Proceeding Instituted	Deportation Proceeding Instituted	Naturalization Proceeding
1. Before 1952 Act	Before 1952 Act	Barred by: Section 329(c), Nationality Act of 1940, as amended.
2. After 1952 Act	After 1952 Act	Barred by: Section 318, Im. & Nat. Act of 1952
3. Before 1952 Act	After 1952 Act	
	A. On grounds in effect before 1952 Act	Barred by: Section 318, Im. & Nat. Act of 1952
	B. On ground **not** in effect before 1952 Act	**Saved** by: Section 405(a), Im. & Nat. Act of 1952

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No. 111

In the Supreme Court of the United States

OCTOBER TERM, 1954

LOUIS SHOMBERG, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 717

LOUIS SHOMBERG, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES

OPINIONS BELOW

The opinions of the Court of Appeals (R. 25–32) are reported at 210 F. 2d 82; the opinion of the District Court (R. 14–21) at 115 F. Supp. 336.

JURISDICTION

The judgment of the Court of Appeals was entered January 25, 1954 (R. 32–33). The petition for a writ of certiorari was filed April 24, 1954. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Section 405 (a) of the Immigration and Nationality Act of 1952 provides that a "right in the process of acquisition" on the effective date of the Act shall be governed by prior law unless otherwise provided. Section 405 (b) provides that petitions for naturalization filed before the effective date shall be determined under prior law "except as otherwise specifically provided." Section 318 specifically provides that notwithstanding the provisions of Section 405 (b) no petition for naturalization shall be finally heard if there is pending a deportation proceeding under the 1952 Act or any other Act. The question presented is whether petitioner, who filed a petition for naturalization prior to the effective date of the 1952 Act, but who has pending against him a deportation proceeding instituted after the effective date of the new Act on grounds which were not a basis for deportation before the new Act, may compel a final hearing on his naturalization petition on the theory that he had a right in process of acquisition which, under Section 405 (a), must be determined in accordance with the prior law.

STATUTES INVOLVED

Section 405 of the Immigration and Nationality Act of 1952, provides in relevant part as follows:

> (a) Nothing contained in this Act, unless otherwise specifically provided therein, shall be construed to affect the validity of any declaration of intention, petition for

naturalization, certificate of naturalization, certificate of citizenship, warrant of arrest, order or warrant of deportation, order of exclusion, or other document or proceeding which shall be valid at the time this Act shall take effect; or to affect any prosecution, suit, action, or proceedings, civil or criminal, brought, or any status, condition, right in process of acquisition, act, thing, liability, obligation, or matter, civil or criminal, done or existing, at the time this Act shall take effect; but as to all such prosecutions, suits, actions, proceedings, statutes, conditions, rights, acts, things, liabilities, obligations, or matters the statutes or parts of statutes repealed by this Act, are, unless otherwise specifically provided therein, hereby continued in force and effect. * * * An application for suspension of deportation under section 19 of the Immigration Act of 1917, as amended, * * * shall be regarded as a proceeding within the meaning of this subsection.

(b) Except as otherwise specifically provided in title III, any petition for naturalization heretofore filed which may be pending at the time this Act shall take effect shall be heard and determined in accordance with the requirements of law in effect when such petition was filed.

Section 318 of the Immigration and Nationality Act of 1952, provides in relevant part as follows:

> * * * Notwithstanding the provisions of section 405 (b) * * * no person shall be naturalized against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this or any other Act; and no petition for naturalization shall be finally heard by a naturalization court if there is pending against the petitioner a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this or any other Act: * * *

Section 241 (a) (4) of the Immigration and Nationality Act of 1952, provides in relevant part as follows:

> Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who * * * at any time after entry is convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefore and regardless of whether the convictions were in a single trial.

Section 19 (a) of the Immigration Act of 1917, 8 U. S. C. (1946 ed.) 155 (a), provided in relevant part as follows:

> any alien * * * who is hereafter sentenced more than once to such a term of imprisonment [of one year or more] because of conviction in this country of any crime involving moral turpitude, committed at any time after entry * * * shall, upon

the warrant of the Attorney General, be taken into custody and deported.

STATEMENT

Petitioner filed a petition for naturalization on December 22, 1952, two days before the effective date of the Immigration and Nationality Act of 1952 (R. 5, 10). During the course of the investigation, it was discovered that petitioner had twice been convicted of crimes involving moral turpitude not arising out of a single scheme of criminal conduct, a fact which rendered him deportable under Section 241 (a) (4) of the 1952 Act (R. 10).

Accordingly on June 22, 1953, a deportation warrant of arrest was issued charging petitioner with being subject to deportation in that he had been convicted of the crimes of grand larceny, second degree, and manslaughter in the first degree (R. 11). On June 24, 1953, a hearing on the deportation charge was held before a special inquiry officer (R. 7, 11).

On July 28, 1953, petitioner obtained an order to show cause directed to the District Director of Immigration seeking to have the petition for naturalization brought on for final hearing and staying the deportation hearing (R. 3–4). Petitioner argued that, since the crimes for which he had been convicted had occurred in 1913 and 1915, he could not have been deported on such basis prior to the enactment of the 1952 Act, and

therefore that his petition for naturalization should be determined under the law in effect prior to the 1952 Act. On behalf of the District Director, it was pointed out that, while Section 405 (b) made petitions for naturalization filed before the effective date of the Act subject to prior law "unless otherwise provided", Section 318 specifically required that "notwithstanding the provisions of Section 405 (b)" no final hearing should be held on a petition for naturalization while there was pending a deportation proceeding under the 1952 Act or any other law. After argument, the District Court denied petitioner's motion and vacated the stay. (R. 14–21.) On appeal, the Court of Appeals affirmed the order of the District Court (R. 32–33).[1] Both courts below rejected petitioner's argument that, although his case fell within the literal terms of Section 405 (b) and Section 318, the general savings clause of Section 405 (a) preserved to him the right to have his case considered under the law as it existed prior to 1952. The District Court stated (R. 21):

> It is true that the part of section 405 (a) which continues the old act in force as to any "right in process of acquisition" would, in its general terms, apply to naturalization proceedings, but the fact that section

[1] The deportation hearing was stayed pending appeal. Since the mandate the Court of Appeals has not gone down, it is still stayed.

> 405 (b) specifically makes exact[illegible] that provision as to naturalization proceedings indicates that the general language in section 405 (a) does not apply to them.

The Court of Appeals noted that to read 405 (a) as broadly as petitioner contended would be to make 405 (b) "entirely redundant" (R. 28).

ARGUMENT

In the petition for certiorari filed on behalf of the Government in *United States* v. *Menasche*, No. —, we have called the attention of the Court to the fact that the decision of the First Circuit in that case, 210 F. 2d 809, is basically in conflict with the reasoning of the Second Circuit in this case as to the construction of the saving provisions of Sections 405 (a) and (b) of the Immigration and Nationality Act of 1952.

In this case, in contrast to *Menasche* and the other cases presenting a similar problem mentioned in that petition,[3] the petition for naturalization was actually filed before the effective date of the 1952 Act. Hence it falls within the express terms of Section 405 (b) which provides that:

> Except as otherwise specifically provided in title III, any petition for naturalization heretofore filed which may be pending at the time this Act shall take effect shall be heard and determined in accordance with

[3] In re *Jacson*, 117 F. Supp. 528 (D. Hawaii); *United States* v. *Pringle*, decided May 4, 1954 (C. A. 4).

> the requirements of law in effect when such petition was filed.

Petitioner's case does, however, come within one of the sections "otherwise specifically provided in title III." Section 318 provides:

> Notwithstanding the provisions of section 405 (b) * * * no petition for naturalization shall be finally heard by a naturalization court if there is pending against the petitioner a deportation proceeding pursuant to a warrant of arrest issued *under the provisions of this or any other Act.* [Emphasis supplied.]

It is difficult to imagine how Congress could more clearly or expressly have indicated its intent that the issue of deportability under the new Act should be determined before a determination is made on a petition for naturalization, even though that petition might in other respects be governed by the old law. The decision below is thus clearly correct.

Nevertheless, in holding that the specific savings clause of Section 405 (b) precluded a pending petition for naturalization from creating a "right in process of acquisition" which, under Section 405 (a), is to be governed by the prior law, the decision below conflicts in its reasoning with the view of the Court of Appeals for the First Circuit in *Monasche* that subsection (a) applies to naturalization matters even though subsection (b) is thereby made redundant. Accordingly, if the

Government's petition in *United States* v. *Menasche* is granted, we do not oppose the granting of the instant petition.

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In the Supreme Court of the United States

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 48

LOUIS SHOMBERG, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinions of the Court of Appeals (R. 14–21) are reported at 210 F. 2d 82. The opinion of the District Court (R. 8–13) is reported at 115 F. Supp. 336.

JURISDICTION

The judgment of the Court of Appeals was entered January 25, 1954 (R. 21–22). The petition for a writ of certiorari was filed April 24, 1954, and was granted October 14, 1954 (R. 23). The jurisdiction of this court rests on 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Section 405 (a) of the Immigration and Nationality Act of 1952 provides, *inter alia*, that pending proceedings and any "right in process of acquisition" on the Act's effective date (December 24, 1952) shall be governed by prior law "unless otherwise specifically provided". Section 405 (b) provides that petitions for naturalization filed before this date shall be determined in accordance with prior law "[e]xcept as otherwise specifically provided in title III" of the Act. Section 318[1] specifically provides that "[n]otwithstanding the provisions of section 405 (b)" no petition for naturalization shall be finally heard if there is pending a deportation proceeding initiated under any act.

Petitioner filed a petition for naturalization prior to the effective date of the 1952 Act. After the effective date, deportation proceedings were instituted against him on grounds which were not a basis for deportation before the new Act became effective.

The question presented is whether, irrespective of the explicit provisions of Sections 318 and 405 (b), petitioner may, nevertheless, compel a final hearing on his naturalization petition by reason of Section 405 (a), on the theory that his pending naturalization petition either began a pro-

[1] Section 318 is found in title III of the Act. Section 405 (a) is in title IV, and thus is not one of the sections which is excepted from Section 405 (b).

ceeding or gave him a right in process of acquisition within the intended meaning of that section.

STATUTES INVOLVED

(1) *Savings Clauses:* Section 405 of the Immigration and Nationality Act of 1952, 66 Stat. 163, 280, 8 U. S. C. 1101, note, in pertinent part, provides:

> SEC. 405. (a) Nothing contained in this Act unless otherwise specifically provided therein, shall be construed to affect the validity of any declaration of intention, petition for naturalization, * * * or other document or proceeding which shall be valid at the time this Act shall take effect; or to affect any * * * proceedings, civil or criminal, brought, or any status, condition, right in process of acquisition, act, thing, * * * or matter, * * * done or existing, at the time this Act shall take effect; but as to all such * * * proceedings, statutes [sic][2] conditions, rights, acts, things, * * * or matters the statutes or parts of statutes repealed by this Act are, unless otherwise specifically provided therein, hereby continued in force and effect. * * *
>
> (b) Except as otherwise specifically provided in title III, any petition for naturalization heretofore filed which may be pending at the time this Act shall take effect shall be heard and determined in accordance with the requirements of law in effect when such petition was filed.

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[2] Presumably the word "statuses" was intended.

The full text of Sections 405 (a) and 405 (b) of the 1952 Act and of the savings clauses of the Nationality Act of 1940, Sections 347 (a) and 347 (b), 54 Stat. 1137, 1168, 8 U. S. C. (1946 ed.) 747, are set forth in Appendix A, *infra*, pp. 47–48, in parallel columns so as to facilitate comparison.

(2) *Priority Provisions:* Section 318 of the 1952 Act, 66 Stat. 244, 8 U. S. C. 1429, gives deportation proceedings and findings priority over proceedings for naturalization. In pertinent part, it provides:

> SEC. 318. * * * Notwithstanding the provisions of section 405 (b), and except as provided in sections 327 and 328 no person shall be naturalized against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this or any other Act; and no petition for naturalization shall be finally heard by a naturalization court if there is pending against the petitioner a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this or any other Act: * * *

Similar priority provisions were found in Section 329 (c) of the Nationality Act of 1940, as added by Section 27 of the Subversive Activities Control Act of 1950, 64 Stat. 987, 1015, 8 U. S. C. (1946 ed. Supp. V) 729 (c). In view of petitioner's argument based on the use of the semicolon in the above sentence of Section 318 (Pet. Br. pp. 27–

30), the legislative history of that section is set forth at length in Appendix B, *infra*, pp. 50–56.

(3) *Other Provisions:* Sections 241 (a) (4), 241 (d), 311, 313 (a), 315 (a) and 331 (d) of the 1952 Act and Section 310 (a) of the 1940 Act are set forth in Appendix C, *infra*, pp. 56–63.

STATEMENT

On December 22, 1952, two days before the effective date of the Immigration and Nationality Act of 1952, petitioner filed a petition for naturalization in the District Court for the Southern District of New York[3] (R. 2). The customary pre-naturalization investigation was thereupon initiated by the Immigration and Naturalization Service (R. 5). This investigation disclosed that petitioner had a criminal record, which included convictions for grand larceny in the second degree in 1913, and for manslaughter in the first degree in 1915 (R. 5–6).

Section 241 (a) (4) of the 1952 Act made aliens subject to deportation whenever convicted, at any time after entry, of two crimes involving moral turpitude not arising out of a single scheme of criminal misconduct.[4] Accordingly, on June 22,

[3] This petition was filed under Section 310 (a) of the Nationality Act of 1940, 54 Stat. 1144, 8 U. S. C. (1946 ed.) 710 (a), which exempted the alien spouse of a citizen from having to comply with the normal condition precedent of first filing a declaration of intention.

[4] Under prior law, deportation for two convictions of crimes involving moral turpitude was limited, *inter alia*, by

1953, a warrant of arrest was issued charging petitioner with being illegally in the United States in violation of Section 241 (a) (4), based on his 1913 and 1915 convictions (R. 6). On June 23, 1953, petitioner was taken into custody under this warrant of arrest, and thereafter released on bond (R. 6). A hearing on the deportation charge was held June 24, 1953, before a Special Inquiry Officer (R. 3, 6), but no final decision as to deportability was made, because of a request by petitioner's counsel that he be granted until August 3, 1953, to submit additional evidence and a brief in support of his application to terminate the deportation proceedings (R. 6).

On July 28, 1953, petitioner, through an order to show cause entered in his naturalization case, moved (1) to compel a final hearing on his petition for naturalization, and (2) to stay the deportation proceedings pending the final hearing upon and adjudication of his naturalization petition (R. 1–2). On August 21, 1953, this motion was denied by Judge Dimock, who held (R. 8–13) that the priority provisions of Section 318 of the 1952 Act, which reenacted Section 27 of the Subversive Activities Control Act, prevented a final

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Section 19 (a) of the Immigration Act of 1917, 39 Stat. 874, 889, 8 U. S. C. (1946 ed.) 155 (a), to crimes committed after the effective date of that Act. Thus petitioner, though not deportable under prior law, apparently became subject to deportation on the effective date of the 1952 Act.

hearing on the petition for naturalization during the pendency of the deportation proceedings. In his opinion, he stated (R. 12–13):

> * * * section 405 (b) is the only provision of the Immigration and Nationality Act of 1952 which, in pending cases, makes the provisions of the old act applicable to the proceedings after the filing of the petition. It is true that the part of section 405 (a) which continues the old act in force as to any "right in process of acquisition" would, in its general terms, apply to naturalization proceedings but the fact that section 405 (b) specifically makes exactly that provision as to naturalization proceedings indicates that the general language in section 405 (a) does not apply to them. Thus, when section 318 provides for priority of deportation proceedings "notwithstanding the provisions of section 405 (b)", it precludes reliance on the preservation of rights under the old law to keep naturalization proceedings from being superseded by deportation proceedings.[5]

On January 25, 1954, the Court of Appeals affirmed, in an opinion by Judge Clark (R. 14–19). While concluding that the order denying petitioner's motion was properly appealable

[5] In the record (R. 13), two lines have obviously been transposed in printing. This typographical error has been corrected in the above quotation. See *Application of Shomberg*, 115 F. Supp. 336, 340.

(R. 15), the court rejected every one of petitioner's contentions directed to the merits (R. 15–19). Judge Frank filed a brief concurring opinion (R. 19–21). Pending a decision by this Court, the deportation proceedings against petitioner have been stayed (Pet. Br. 6).

SUMMARY OF ARGUMENT

In our brief in *United States* v. *Menasche*, No. 104, this Term, we developed two points which likewise govern this case: (1) Section 405 (b) is the only savings clause in the Immigration and Nationality Act of 1952 applicable to the hearing and determination of naturalization petitions; and (2) the term "right in process of acquisition", used in Section 405 (a) of the 1952 Act, does not apply to the hearing and determination of such petitions. In this brief, wherever possible, the material developed in our *Menasche* brief will be merely summarized. This case also raises certain problems, arising out of the application of Section 318 of the 1952 Act, which are not at issue in *Menasche*.

I

Section 318 of the 1952 Act provides for the priority of deportation proceedings, brought pursuant to "this or any other Act," over naturalization proceedings, so as to prevent undesirable aliens from totally nullifying the deportation process by acquiring a naturalization decree before a final decision could be entered in the de-

portation case. These priority provisions were a substantial reenactment of similar legislation first adopted in the Subversive Activities Control Act of 1950. Section 318 is by its terms squarely applicable to petitioner's case. Thus his motion for an immediate hearing on his naturalization petition, despite the pendency against him of uncompleted deportation proceedings, was properly denied, unless the savings clauses of the 1952 Act are here applicable.

II

When analyzed in the light of their legislative history and statutory context, the priority provisions of Section 318 and the savings provisions of Sections 405 (a) and 405 (b) of the 1952 Act manifest, in unmistakable fashion, a positive congressional intent that the provisions of Section 318 were to become immediately applicable and were not to be governed in any way by either of the two savings clauses.

A (1). Section 405 (b) provides:

> SEC. 405. * * * (b) Except as otherwise specifically provided in title III, any petition for naturalization heretofore filed which may be pending at the time this Act shall take effect shall be heard and determined in accordance with the requirements of law in effect when such petition was filed.

While petitioner's naturalization petition was in fact pending on the effective date of the Act,

and thus falls within the specific subject matter governed by this section, it is excepted therefrom by the provisions of Section 318, from title III of the Act, which contains the introductory clause "[n]otwithstanding the provisions of section 405 (b)".

Petitioner's argument, that the general savings provisions of Section 405 (a) also govern the hearing and determination of naturalization petitions, gains plausibility only when certain phrases appearing in that section are wholly removed from their statutory context and legislative history. Analysis of the two savings clauses discloses a clear intention that the broad general terms of Section 405 (a) should not govern the same subject matter explicitly and completely dealt with in Section 405 (b): namely, the hearing and determination of petitions for naturalization.

Sections 405 (a) and 405 (b) were derived from similar provisions appearing in Section 347 (a) and 347 (b) of the Nationality Act of 1940. When identical words and phrases were used in the 1952 enactment, they were intended to have the same meaning as in the earlier law. Such changes as were made in the 1952 Act do not alter the underlying structure of the savings clauses or make Section 405 (a) control 405 (b); just as Section 347 (a) obviously did not control Section 347 (b) in the earlier Act. In particular, the legislative history and context of the new term "right in process of acquisition", placed in Sec-

tion 405 (a) to resolve conflicting court decisions, show that this phrase does not apply to the hearing and determination of naturalization petitions, but rather to such matters as the derivation of citizenship by a minor without court proceedings, through his parent's naturalization.

A (2). Petitioner's contentions, besides ignoring the history and context directly applicable to the words and phrases used in Section 405, would have serious unintended effects on other portions of the Act.

a. If such terms as "any * * * proceedings, or * * * right in process of acquisition" are to be held applicable to the hearing and determination of naturalization petitions, the same subject matter exclusively dealt with by Section 405 (b), this latter section would be rendered wholly redundant and meaningless.

b. Section 405 (b) begins "[e]xcept as otherwise specifically provided in title III". This excepting phrase dovetails with five provisions in title III, all of which begin with language such as "[n]otwithstanding the provisions of section 405 (b)". The five "notwithstanding" clauses could have been included with but one purpose in mind:—that of making the provisions introduced by these clauses immediately applicable to *pending* naturalization proceedings "notwithstanding" the savings provisions which would have otherwise prevented such immediate applicability. Two of these five sections give distinct

advantages, not previously available, to applicants for naturalization; the other three apply to persons generally classified under the terms "subversives" or "other undesirables," and drastically limit the right of such persons to be naturalized. Petitioner's reading of the statute would totally nullify the effect of these five "notwithstanding" clauses, thus thwarting the obvious legislative intent to have these provisions apply immediately to all naturalization hearings.

c. Furthermore, the acceptance of petitioner's contentions would be indirectly productive of substantial unintended inequities and anomalies. Certain favored aliens, such as veterans and spouses of United States citizens, were by prior law specially exempted from having to comply with various naturalization requirements. If Section 405 (a) is to govern, these favored aliens would have fewer rights with respect to naturalization under prior law than any member of the less favored alien groups who had taken, immediately on arriving in the United States, one of the required preliminary steps from which the favored group has been exempted.

A (3). There is no statutory interstice which prevents the priority provisions of Section 318 from applying to cases where subsequently commenced deportation proceedings are based on new grounds not theretofore available under prior law. No such interpretation is apparent from the face of the statute or is justified by its legis-

lative history. When originally enacted in 1950, the priority provisions became immediately effective as to all pending naturalization proceedings, without exception, whether deportation charges were based on old or new grounds. The 1952 reenactment of these priority provisions discloses a similar intent.

In sum, the conclusion is inescapable that Section 405 (b) is the only savings provision which is applicable to the hearing and determination of naturalization petitions. While it is phrased, as was Section 347 (b) of the 1940 Act, in terms of prior law controlling the determination of specific pending naturalization petitions, this phrasing necessarily implies that all future naturalization petitions, and all pending petitions exempted from Section 405 (b) by title III, are to be heard and determined in accordance with the requirements of the new law.

B. Petitioner's alternative contention, characterized in the court below as a "thoroughgoing semicolonization of §318" (R. 19), rests on the use of a semicolon rather than a comma to separate the priority provision relating to final findings of deportability from that relating to pending deportation proceedings. This contention is directly refuted by petitioner's erroneous assumption as to the origin of the semicolon; by the complete lack of any reason or explanation on the part of Congress to change the previous statutory scheme; by the absence of punctuation

in the clause excepting certain veterans from the operation of both of the priority provisions of Section 318; and by the inherent weakness and fallibility of punctuational argument generally and the specific weakness of this one in particular.

Since none of the savings provisions of the 1952 Act are here applicable, petitioner's motion for hearing on his naturalization petition during the pendency of deportation proceedings was properly denied. The judgment below should be affirmed.

ARGUMENT

In our brief in *United States* v. *Menasche,* No. 194, this Term, at pp. 11–36, two points were developed which are equally applicable in this case: (1) Section 405 (b) is the only savings clause in the Immigration and Nationality Act of 1952 applicable to the hearing and determination of naturalization petitions;[6] and (2) the term "right in process of acquisition," used in Section 405 (a) of the 1952 Act does not apply to the hearing and determination of such petitions. In this brief, wherever possible, the arguments and authorities in support of these two propositions will be somewhat summarized, so as to avoid unnecessary repetition. Some relevant supplemental supporting material has also been here incorporated.

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[6] Section 405 (a) preserves only "the *validity* of * * * [certain] petition[s] for naturalization." [Italics supplied.] Section 405 (b) relates solely and specifically to the *hearing* and *determination* of such petitions. Cf. *In re Shacar,* 140 F. 2d 180 (C. A. 7).

Additionally, this case involves certain new problems, arising out of the intended application of Section 318 of the 1952 Act, which are not in issue in *Menasche*. Section 318 provides that deportation proceedings brought pursuant to "this or any other Act" shall have priority over naturalization proceedings.

If it had not been for the enactment of the 1952 Act, there would be no bar to the holding of a final hearing in petitioner's naturalization case, since, under prior law, he would not have been deportable. However, Section 241 of the 1952 Act appears to render petitioner retroactively subject to deportation by reason of his two prior convictions for manslaughter and grand larceny.[7] Therefore, once deportation proceedings were commenced against petitioner in 1953, Section 318 became directly applicable.

In seeking to avoid the impact of Section 318, petitioner relies on a strained construction of both that section and the savings provisions of Section 405. As Judge Clark in his opinion for the court below properly pointed out, petitioner's labored interpretation cannot be sustained and "does violence to the Act" (R. 18). Petitioner's contentions regarding the savings provisions are dealt with in Point II, *infra*, pp. 19–46, and are wholly without merit. They are in many respects similar to those which were urged in *Menasche*, when that case was before the lower courts. Not only

[7] Section 241 (d), with exceptions not here applicable, expressly provides for deportation on the basis of offenses which occurred prior to the effective date of the 1952 Act.

do these contentions ignore the legislative history of the Act and the meaning most apparent from the statutory context, but they would result in wholly nullifying important provisions of the 1952 Act, and would create inequities and anomalies which were obviously never intended.[8]

I

PETITIONER'S MOTION FOR A FINAL HEARING ON HIS PETITION FOR NATURALIZATION WAS PROPERLY DENIED, SINCE THE PRIORITY PROVISIONS OF SECTION 318 OF THE IMMIGRATION AND NATIONALITY ACT OF 1952 BAR SUCH FINAL HEARINGS DURING THE PENDENCY OF DEPORTATION PROCEEDINGS

Section 318 of the 1952 Act, in pertinent part, provides:

> SEC. 318. * * * Notwithstanding the provisions of section 405 (b), and except as provided in sections 327 and 328 no person shall be naturalized against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this or any other Act; and no petition for naturalization shall be finally heard by a naturalization court if

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[8] Petitioner urges alternatively (Pet. Br. 27–30) from an ambiguous punctuational variation, that the words "[n]otwithstanding the provisions of section 405 (b)" used in Section 318 do not apply unless and until a final finding of deportability has been made. As is shown, *infra*, pp. 45–46, this argument is not only based on an erroneous assumption as to the origin of the punctuation mark in question, but does obvious violence to the intended meaning of Section 318.

> there is pending against the petitioner a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this or any other Act: * * *.

This section gives final findings of deportability and pending deportation proceedings priority over all naturalization proceedings with two exceptions not here applicable.[9] They are generally referred to as "priority provisions."[10]

Prior to 1950, there were no similar provisions in our naturalization laws. The absence of such provisions led to a race between the Attorney General seeking to deport an alien, and the alien seeking to obtain naturalization (see R. 9), in cases where an individual was at the same time eligible to become a citizen and subject to deportation. By filing a naturalization petition and forcing a final hearing thereon, an alien could, if his petition were granted, effectively nullify the deportation proceedings. No matter how grave the grounds upon which the deportation proceedings were based, favorable action on the petition for naturalization would prevent deportation.

To remedy this situation, Senator McCarran, in 1950, included appropriate provisions, similar to those now found in Section 318 of the 1952

[9] The exceptions are in Sections 327 and 328, 66 Stat. 248, 249, 8 U. S. C. 1438, 1439, which relate to certain persons who had performed specified military service in our armed forces, or in those of our allies in World War II.

[10] See Appendix B, *infra*, pp. 50-56, for the detailed legislative history of this priority section.

Act, in his initial "omnibus bill" to revise and codify the immigration, nationality, and naturalization laws. S. 3455, 81st Congress, 2d Session. When it became evident that this bill would not be enacted in that session of Congress, Senator McCarran introduced similar priority provisions in an amendment which became incorporated in Section 27 of the Subversive Activities Control Act of 1950, 64 Stat. 1015, 8 U. S. C. (1946 Ed. Supp. V) 729 (c). This Act took immediate effect and contained no savings clause. Section 27 operated to prohibit naturalization, or the holding of final hearings, both prospectively and retroactively in the case of undetermined naturalization petitions already pending on the effective date of the Act. This was so even where the deportation proceedings were commenced, as in petitioner's case, subsequent to the pending naturalization proceedings. *United States ex rel. Jankowski* v. *Shaughnessy*, 93 F. Supp. 7 (S. D. N. Y.), affirmed, 186 F. 2d 580 (C. A. 2).

This provision worked no undue inequity on the alien against whom a deportation charge was pending. If the charge were found not to be sustained, he would then be eligible to proceed with his naturalization in the usual course. If it were sustained, he would fall within the category of aliens whom Congress wished to exclude from the United States and therefore from United States citizenship. Without these provisions, a

premium was placed upon the speed with which a potentially deportable alien was able to get his naturalization petition before the naturalization court and thereby tie the Government's hands.

Section 318 of the Immigration and Nationality Act of 1952 substantially reenacted Section 27 of the 1950 Act. By its terms, this section is expressly applicable to petitioner's case. Thus petitioner's motion for an immediate hearing on his naturalization petition, despite the pendency against him of uncompleted deportation proceedings, was properly denied, unless, as petitioner argues, the savings clauses of the 1952 Act apply in derogation of the priority provisions of Section 318 and thus to the facts of this case. As is shown in Point II, *infra*, pp. 19–46, the savings clauses do not here apply.

II

THE SAVING CLAUSES OF THE 1952 ACT ARE NOT APPLICABLE TO CASES INVOLVING THE PRIORITY PROVISIONS OF SECTION 318

A. SECTION 405 (B) IS THE ONLY SAVINGS PROVISION IN THE 1952 ACT WHICH IS APPLICABLE TO THE HEARING AND DETERMINATION OF NATURALIZATION PETITIONS

1. The savings clauses must be construed in the light of their legislative history and in context with all applicable portions of the Act

As we have already pointed out in our brief in *Monasche*, No. 104, this Term, at pp. 12 *et*

seq., the problem here presented is to construe the statute so as to effectuate the manifested intent of Congress, as reflected in the language, the legislative history, and the context of the Act. This was clearly and explicitly recognized by Judge Clark in his opinion for the Court of Appeals (see R. 16–19), which, after careful analysis, rejected petitioner's contentions regarding the intended meaning of the 1952 Act.

It is universally recognized that the savings clauses included in Section 405 of the 1952 Act were directly derived from similar savings provisions found in Section 347 of the 1940 Act.[11] Both the similarities and the differences between these provisions are significant. These savings clauses, in relevant part, provide:[12]

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[11] The full text of all relevant savings clauses of both Acts is set forth in Appendix A, *infra*, pp. 47–48.

[12] Italics supplied to indicate possible areas of conflict between the (a) and (b) subsections of the savings provisions of each Act. Petitioner's case rests primarily on such alleged conflicts.

1940 Act

SEC. 347. (a) Nothing contained in either chapter III or in chapter V of this Act, unless otherwise provided therein, shall be construed to affect the *validity of any* declaration of intention, *petition for naturalization*, * * * or other document *or proceeding which shall be valid* at the time this Act shall take effect; or to affect *any* * * * *proceedings*, civil or criminal, brought, or *any act, thing, or matter*, civil or criminal, done or existing, at the time this Act shall take effect; but as to all such * * * proceedings, acts, things, or matters, the statutes or parts of statutes repealed by this Act, are hereby continued in force and effect.

(b) *Any petition for naturalization* heretofore filed which may be pending at the time this Act shall take effect *shall be heard and determined* within two years thereafter in accordance with the requirements of law in effect when such petition was filed.

1952 Act

SEC. 405. (a) Nothing contained in this Act, unless otherwise specifically provided therein, shall be construed to affect the *validity of any* declaration of intention, *petition for naturalization*, * * * or other document *or proceeding which shall be valid* at the time this Act shall take effect; or to affect *any* * * * *proceedings*, civil or criminal, brought, or *any status, condition, right in process of acquisition, act, thing*, * * * *or matter*, civil or criminal, done or existing, at the time this Act shall take effect; but as to all such * * * proceedings, statutes [sic], conditions, rights, acts, things, * * * or matters the statutes or parts of statutes repealed by this Act are, unless otherwise specifically provided therein, hereby continued in force and effect. * * *

(b) Except as otherwise specifically provided in title III, *any petition for naturalization* heretofore filed which may be pending at the time this Act shall take effect *shall be heard and determined* in accordance with the requirements of law in effect when such petition was filed.

* * * * *

Petitioner relies, as does Menasche, on what he conceives to be a conflict between the express provisions of Section 405 (b), which singles out for specific consideration the hearing and determination of naturalization petitions, and certain phrases appearing in the broad general savings clause contained in Section 405 (a). This conflict results from the removal of certain words from their context in the statute, followed by a literal use of dictionary definitions. This technique is hardly conducive to the discovery of legislative intent. See *United States* v. *American Trucking Associations*, 310 U. S. 534, 542.

(*a*). *The 1940 Savings Clauses.* Petitioner fails to note that a similar apparent conflict also existed between the ancestral provisions—Sections 347 (a) and 347 (b) of the 1940 Act.[9] When Congress first set forth in Section 347 (b) of the 1940 Act a specific savings provision, applicable solely to the hearing and determination of petitions for naturalization, immediately following the very broad general provisions of Section 347 (a), it was obviously intended that the specific should govern the general. This is shown by the presence of the two-year limitation, which clearly negates the possibility of prior law having been intended to apply indefinitely to the hearing and determination of pending naturalization pe-

[9] See the italicized words used in the parallel presentation, *supra*, p. 21.

titions, as would have been the case if Section 347 (a) had applied to such proceedings.

Of course, when removed from their statutory setting, such terms as "any * * * proceedings, * * * or any act, thing, or matter" used in Section 347 (a) might be literally applicable to the hearing and determination of naturalization petitions. However, it becomes wholly clear from the context that they were never meant to limit or qualify the explicit narrow provisions of Section 347 (b). Otherwise, as just noted, the two-year limitation provision of Section 347 (b) would have been rendered a total nullity, a result that was unquestionably never intended. It follows that broad general terms like "any * * * proceedings" used in Section 347 (a) did not include proceedings to hear and determine naturalization petitions.

While Section 347 (b) was phrased in terms of prior law controlling the determination of pending petitions for a period of two years, this phrasing necessarily implied that thereafter any remaining pending petitions, as well as all petitions subsequently filed, were to be heard and determined in accordance with the requirements of new law. No case arising under the 1940 Act has been found in which it was apparently even argued that any of the general provisions of Section 347 (a) should govern such hearings.

This meaning of the 1940 savings provisions, besides being plain on the face of the Act, is

likewise similarly apparent on the application of basic rules of statutory construction. As Chief Justice Taney remarked in *Perrine* v. *Chesapeake and Delaware Canal Co.*, 9 How. 172, 190:

> But we cannot take out of a statute a single word susceptible of different meanings, and expound it without reference to the context, and without any regard to the subject-matter of which the legislature is speaking, or to the provisions and language with which it is associated.

A second equally well-recognized and applicable principle, although surprisingly challenged by petitioner as regards the savings clauses of the 1952 Act,[9] is that a statute of general applicability, such as Section 347 (a), does not take precedence over the more particularized specific provisions of Section 347 (b). In such cases the general must give way to the specific. In reaffirming this familiar rule in *MacEvoy Co.* v. *United States*, 322 U. S. 102, 107, this Court stated:

> However inclusive may be the general language of a statute, it "will not be held to apply to a matter specifically dealt with in another part of the same enactment. * * * Specific terms prevail over the general in the same or another statute which might otherwise be controlling." *Ginsberg & Sons* v. *Popkin*, 285 U. S. 204, 208.

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[9] See petitioner's brief, pp. 17–22.

See also *Townsend* v. *Little*, 109 U. S. 504, 512; *McKee* v. *United States*, 164 U. S. 287, 294.

(*b*). *The 1952 Savings Clauses.* Analysis of both the similarities and the differences which are found in the 1952 savings clauses shows that no change was intended as respects the controlling nature of Section 405 (b) in the case of any apparent conflict with the general language of Section 405 (a). Just as Section 347 (b) in the 1940 Act was the only savings provision of that Act applicable to the hearing and determination of naturalization petitions, so is Section 405 (b) in the 1952 Act. The same basic organization appears in the savings provisions of both Acts. Subsection (a) in each Act is applicable generally to a wide variety of proceedings, things, and matters. Subsection (b) of each is made applicable exclusively to the hearing and determination of naturalization petitions. In large part the very same words are used and without change in order. Obviously, these identical words in the 1952 Act were intended to have the same sense as in the earlier enactment.

The changes and additions in the 1952 savings clauses altered neither the intended meaning of the words incorporated from the earlier enactment, nor the fundamental underlying structure of the savings provisions. Nor do they in any way extend the applicability of Section 405 (a) to the hearing and determination of naturalization petitions. Most of these changes and addi-

tions were made (1) because of the expanded scope of the 1952 Act, which, unlike the 1940 law, applies to immigration as well as nationality and naturalization matters; or (2) to reconcile ambiguities which had been disclosed by judicial decisions made under the 1940 Act; or (3) to exclude certain important sections of the new law from the savings clauses so as to make such sections immediately effective.

As already shown in our *Menasche* brief, at pages 14–15, the two-year limitation was omitted from Section 405 (b) so as to resolve the needless confusion created by such cases as *In re Shaver*, 140 F. 2d 180 (C. A. 7), *Petition of Hirsch*, 50 F. Supp. 638 (E. D. Pa.), *In re McInnis*, 50 F. Supp. 303 (D. Mass.), and *Petition of La Bella*, 52 F. Supp. 980 (D. Conn.).[15] Obviously the elimination of this provision from the (b) subsection of the savings clauses was not in any way intended to change or expand the prior meaning of any of the terms incorporated in the (a) subsection.

On the other hand, while Section 405 (b) was made more liberal as regards the time limitation applicable to hearings on pending naturalization petitions, its scope was specifically narrowed in certain very important respects by the express ex-

[15] It is also apparent that the two-year provision caused arbitrary distinctions between similarly situated aliens, with results depending on the speed with which a particular case could be reached for a final hearing.

clusion of five provisions found in title III of the 1952 Act. The inclusion of these title III exceptions, one of which was Section 318, could have had no other purpose than to make these particular sections immediately applicable to the hearing and determination of all naturalization petitions, and not merely to those filed after the effective date of the Act. This matter is analyzed in detail under sub-point 2, *infra*, at pp. 29–39.

The one change in the 1952 savings clauses which both petitioner and Menasche most strongly advance, as indicating a possible legislative intent to render Section 405 (b) meaningless and to make Section 405 (a) control the hearing and determination of naturalization petitions, is the inclusion in Section 405 (a) of the new terms "status", "condition", and "right in process of acquisition". These general terms, when removed from their context in the statute, might create the same sort of apparent conflict as the term "any * * * proceedings", the meaning of which has already been discussed, *supra*, p. 23. The same principles of construction apply to these three new terms, which were included in Section 405 (a) to resolve the conflict created by *United States ex rel. Aberasturi* v. *Cain*, 147 F. 2d 449 (C. A. 2) and *Bertoldi* v. *McGrath*, 178 F. 2d 977 (C. A. D. C.).[36]

[36] The three new terms were in fact lifted from these cases. In *Aberasturi*, 147 F. 2d at 452, the Second Circuit stated: "We think that [Section 347 (a)] does not cover a mere *condition*, unattended by any affirmative action by the alien" and

As is shown by a detailed analysis prepared by the Immigration and Naturalization Service and submitted to the Congressional Committees which were considering the bill in question (see Appendix A, *infra*, pp. 48–50), these terms were intended to cover such matters as the derivation of citizenship by a minor, without court decree, through his parent's naturalization. They were clearly not added to change the rules affecting the hearing and determination of naturalization petitions or to qualify or limit the explicit provisions and policy set forth in Section 405 (b) and in the five title III sections specifically singled out for immediate application to the hearing and determination of all such petitions.[17]

"relator's mistaken assertion * * * could not create [citizenship] *status*". In reaching a contrary conclusion in *Bertoldi*, 178 F. 2d at 978 and 979, the District of Columbia court stated: "Certainly the words of the saving clause in the 1940 statute— * * * proceedings, act, thing, or matter—were about as broad as language could be" and "the savings clause must have referred to *rights in process of acquisition*." [Italics supplied in both quotations.] See particularly, Appendix A, *infra*, pp. 49–50.

Both these cases involved *derivative* citizenship, a non-judicial proceeding in which an alien-born child acquires United States citizenship by virtue of a parent's naturalization, a lawful admission for permanent residence, and a stated period of residence in the United States while still a minor. Since no naturalization petition is involved in this procedure, Section 347 (b) was not in any way in issue.

[17] The only other change to which petitioner refers is the inclusion in the 1952 Act, in both subsections (a) and (b), of the word "specifically", in the phrases "[e]xcept as otherwise specifically provided". The inclusion of this word in all drafts of the "omnibus bill" seems to have been for rea-

(*c*). The pattern of the savings clauses of the 1940 and 1952 Acts is thus the same. Each contains "broad and sweeping" provisions designed to cover general rights, proceedings and matters; each selects for special treatment the hearing and determination of petitions for naturalization. This is highly compelling evidence, *per se*, that Congress was legislating in two separate and distinct spheres, and that one should not be construed to override or otherwise alter the application of the other.

Even assuming *arguendo* that the broad language of Sections 347 (a) and 405 (a) might properly have controlled were there no subsection (b), the inclusion of the latter in each Act automatically deprives subsection (a) of any applicability to the hearing and determination of petitions for naturalization.

2. If the general savings provisions of Section 405 (a) should be held applicable to the same subject matter exclusively dealt with by Section 405 (b), the latter section would be rendered entirely redundant, five important provisions in title III of the Act would be totally nullified, and unintended inequities and anomalies would result

(*a*). *Redundancy of Section 405 (b).* As stated by Judge Clark in his opinion for the Court of

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sons of style. In the context of the Act, it is clear that this change could not have been intended to subordinate the specific provisions of Section 405 (b) to the general ones contained in Section 405 (a), thus rendering Section 405 (b) completely redundant, nullifying the five title III exceptions, and creating many unintended inequalities and anomalies. See especially *infra*, pp. 29-39.

Appeals, petitioner's contentions regarding the alleged scope of Section 405 (a) would make Section "405 (b) entirely redundant" (R. 17). Such a reading of the statute would not be proper in the absence of very strong evidence that Congress had in fact intended to incorporate a wholly meaningless and futile provision in the Act. There is a total lack of any such evidence. On the other hand there are many indications that point compellingly to the conclusion reached by the court below that Section 405 (b) was included with the intention that its provisions should alone govern the circumstances under which naturalization petitions were to be heard and determined by prior law. If, as urged by petitioner, such terms as "any * * * proceedings * * * or * * * right in process of acquisition" are to be held applicable, in spite of the specific provisions of Section 405 (b), that latter section becomes completely purposeless and loses all meaning. This was unquestionably never intended.[18]

(*b*). *Nullification of Provisions in Title III.* Not only would Section 405 (b) become a wholly redundant and useless provision, but five important provisions found in title III of the 1952 Act would be nullified in violation of a clearly manifested congressional intent. Section 405 (b)

[18] It seems unnecessary to repeat here the authorities or further argument regarding this proposition, which has been already sufficiently covered in our brief in *Menasche* at pp. 19–22 and pp. 30–31.

begins "[e]xcept as otherwise specifically provided in title III".[29] This excepting phrase dovetails with five provisions in title III, all of which begin with language such as "[n]otwithstanding the provisions of section 405 (b)". This harmony of language is in itself strong evidence that there was considered meaning and purpose behind the provisions of Section 405 (b). An examination of the five excepted sections furnishes evidence which is virtually conclusive.

The excepted provisions are Section 318, the one directly affecting petitioner, and Sections 311, 313 (a), 315 (a) and 331 (d).[30] The aliens covered by these sections fall within two groups, those to whom Congress wished to extend benefits which were not available to them under prior law; and those whom Congress wished to bring within certain more stringent and restrictive provisions included in the 1952 Act.

(i). In the first group are those aliens covered by Section 311. Under Section 303 of the 1940 Act, 54 Stat. 1140, 8 U. S. C. (1946 ed.) 703, certain racial restrictions to naturalization were laid down. Section 311 eliminates those restrictions and declares that naturalization shall not

[29] As already indicated, Section 405 (a) is found in title IV of the Act, and thus is not one of the sections which is specifically excepted from Section 405 (b).

[30] The full text of Section 318 is set forth in Appendix B, *infra*, pp. 50-51, and that of the other four sections, in Appendix C, *infra*, pp. 57-63.

be denied or abridged because of race. Thus, petitioners before the 1952 Act, who might otherwise have been ineligible to citizenship on racial grounds, are made eligible by the inclusion in Section 311 of the words "[n]otwithstanding section 405 (b)". If Section 405 (b) is read out of the statute under the construction urged by the petitioner, the racial restrictions will be perpetuated with respect to aliens who had petitions pending on the effective date of the 1952 Act—despite the efforts of Congress to lift them.

Also in the first group are alien enemies. Section 326 of the 1940 Act, 54 Stat. 1150, 8 U. S. C. (1946 ed.) 726, contained no express provisions for the termination date of their alien enemy status, necessitating the ratification of a peace treaty or legislation formally terminating the war before they became eligible for naturalization. Section 331 (d) of the 1952 Act provides for the termination of alien enemy status for purposes of naturalization upon a declaration of the cessation of hostilities by the President or Congress. By the phrase "[n]otwithstanding the provisions of section 405 (b)," Section 331 (d) is made immediately applicable to aliens with petitions already pending on the effective date of the Act. By reason of this excepting provision, such aliens became eligible for naturalization sooner than they otherwise would under the 1940 Act. Here again, under the petitioner's construction of Sec-

tion 405 (b), these aliens would be deprived of a benefit Congress sought to extend to them.

(ii). In the second group are members of the Communist Party and other aliens who may be generally classified under the heading "subversives" (Section 313 (a)); persons who on the basis of their status as aliens refused to serve in the military forces of the United States when called upon to do so under the various draft acts (Section 315 (a)); and aliens who have either been found deportable or who have become the subject of deportation proceedings (Section 318). Undesirability as citizens or alien residents is the common denominator of these three classes; and Congress, recognizing this, took specific steps to insure that immediately upon the effective date of the 1952 Act such aliens should not thereafter have the opportunity to acquire the benefits of United States citizenship.

Of these restrictive provisions, the one with apparently the broadest impact is Section 313, which deals with members of the Communist Party and other subversives. From the earliest days of the Republic, Congress has legislated to deny United States citizenship to aliens reluctant to sever political ties with the countries of their allegiance and in good faith embrace the principles of the Constitution of the United States. In the first naturalization act, passed in 1790, applicants were required to swear to support the

Constitution.[21] In 1795, the language presently in use was first employed: "attached to the Constitution of the United States, and well disposed to the good order and happiness of the same."[22] Coincident with this naturalization legislation, Congress sought to prevent aliens not of this type from establishing permanent residence in the United States.[23]

In 1903, Congress deemed it necessary for the first time to single out for specific treatment anarchists and other disbelievers and opponents of organized government. The Act of March 3, 1903[24] forbade their entry, directed their deportation if already here, and prohibited their naturalization.[25] During the intervening years, as more apparent threats to our national security developed, such legislation was expanded and

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[21] Act of March 26, 1790, 1 Stat. 103.

[22] Act of January 29, 1795, 1 Stat. 414. See also Act of June 25, 1798, 1 Stat. 570; Act of April 14, 1802, 2 Stat. 153.

[23] Section 1, Act of June 25, 1798, 1 Stat. 570; Sections 2 and 38, Act of March 3, 1903, 32 Stat. 1213, 1214, 1221; Section 2 and 38, Act of February 20, 1907, 34 Stat. 898; Section 2, Act of March 26, 1910, 36 Stat. 263; Sections 3 and 28, Immigration Act of 1917, 39 Stat. 875–878, 894. More recently see many provisions contained in the following: Act of October 16, 1918, 40 Stat. 1012; Act of June 5, 1920, 41 Stat. 1008; Act of June 28, 1940, 54 Stat. 670 with amendments; Act of September 23, 1950, 64 Stat. 987. See also Section 212 (a) (28) of the 1952 Act, 8 U. S. C. 1182.

[24] Act of March 3, 1903, sec. 39, 32 Stat. 1222.

[25] Act of June 29, 1906, sec. 7, 34 Stat. 598–599; Nationality Act of 1940, sec. 305, 54 Stat. 1141, 8 U. S. C. (1946 ed.) 705, as amended by sec. 25 of the Internal Security Act of 1950, 64 Stat. 1013.

strengthened, until, in the 1952 Act, we find Section 313 (a) covering the subject in exhaustive detail.[28] Congress not only forbade the naturalization of such persons under the 1952 Act if they had performed any of the proscribed acts within a period of ten years preceding filing of their petitions for naturalization, but, by including the "notwithstanding" clause, sought to insure that the entire section be applicable even to those who had petitions pending when the Act became effective. Congress also in this section absolved from the prohibition those whose membership in proscribed organizations was involuntary or occurred and terminated prior to age sixteen, or was actuated through operation of law, or was for the purpose of obtaining employment or the necessities of life. This highly significant and detailed legislation would be totally nullified, in so far as it expands prior law, as to all persons who had petitions pending when the 1952 Act became effective, if, as petitioner contends, Section 405 (b) is held not to govern exclusively the hearing and determination of petitions for naturalization. There can be no

[28] While petitioner does not extend his argument beyond the proposition that the filing of a naturalization petition gives him a "right in process of acquisition," Menasche's argument is necessarily far broader and would withhold the application of this and other sections for many more years as to anyone who could claim in some way to have commenced the process of acquiring some inchoate right to naturalization."

shadow of doubt that such a result was never the intention of Congress.

With respect to Section 315, the permanent disability incurred by aliens who refused to serve in the United States Armed Forces had been fixed by various draft acts. Congress, to make abundantly sure there should be no misunderstanding that the disability was to outlive the expiration of the various acts, included a specific provision to that effect, which was to be applicable "[n]otwithstanding the provisions of section 405 (b)".[27] This phrase would likewise have to be rendered meaningless if petitioner's contention were to prevail.

It is thus compellingly clear that, as to each of the four sections analyzed above, the "notwithstanding" clause was inserted for the specific purpose of making these sections immediately applicable to the hearing and determination of all naturalization petitions, irrespective of whether the petition had been filed prior or subsequent to the effective date of the Act. An identical intent is disclosed by the inclusion of the same "[n]otwithstanding the provisions of section 405 (b)" clause with the priority provisions of Section 318.

When these provisions were initially enacted as Section 27 of the Subversive Activities Con-

[27] See Senate Report No. 1515, 81st Congress, 2d Session, pp. 725, 731; House Report No. 1365, 82d Congress, 2d Session, pp. 81–82.

trol Act of 1950, they became immediately applicable, because of the absence of any savings provision, to pending proceedings. Section 22 of the 1950 Act, 64 Stat. 1006, 8 U. S. C. (1946 ed., Supp. V) 137–137.8, enlarged in various respects the grounds for deportability, just as these grounds were further enlarged by Section 241 (a) of the 1952 Act. By reenacting in Section 318 the same sort of priority provisions as were included in the 1950 Act and by making these provisions immediately applicable to the hearing and determination of both pending and future petitions, Congress was merely carrying forward its earlier legislation.[28]

(iii). In sum, the draftsmen of the 1952 Act have made clear what they intended by the inclusion of the five "notwithstanding" clauses. They could have had but one purpose in mind:— that of making these five provisions immediately applicable "notwithstanding" the savings provisions which would have otherwise prevented their

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[28] Senate Report No. 1137, 82d Congress, 2d Session, states, at p. 45:

"In general, the provisions relating to preliminary and final hearings on petitions for naturalization are carried over from existing law. * * * The bill also carries forward the provision of the Internal Security Act which prohibits holding of a final hearing on a petition if there is pending against the petitioner a deportation proceeding, and which prohibits naturalization of any person against whom there is outstanding a final order of deportation."

(The Subversive Activities Control Act constitutes title I of the Internal Security Act.)

applicability to the hearing and determination of pending naturalization petitions. They used the words which appeared most appropriate for that purpose, both in the context of prior law and of the Act being drafted.

Thus, to construe Section 405 (a) as covering the hearing and determination of naturalization petitions, to the effective exclusion of Section 405 (b), will have the far reaching result of preventing the application of five separate sections of the 1952 Act to persons whose petitions were pending on the effective date of the 1952 Act. Two of these would deprive the individuals concerned of distinct advantages not otherwise available to them; the other three would defeat Congressional efforts to prevent the granting of United States citizenship to subversive aliens, to aliens who refused to serve, as United States citizens were required to do, in the Armed Forces of the United States, and to aliens who are subject to deportation. A construction which would so thwart the will of Congress, so plainly expressed, would be indefensible.

(c): *Unintended inequities and anomalies.* Petitioner's basic contention that the general terms in Section 405 (a), by reason of the apparent conflict which results from the removal of certain words from their context, predominate over the specific provisions of Section 405 (b), would also be productive of substantial unintended inequities and anomalies. If such broad

expressions as "right in process of acquisition" should be held to govern the hearing and determination of naturalization petitions, that term would also apply, as held by the Court of Appeals for the First Circuit in *United States* v. *Menasche*, 210 F. 2d 809, to declarations of intention and other preliminary steps and conditions precedent in the naturalization process. Cf. *Petition of Pringle*, 122 F. Supp. 90 (E. D. Va.), affirmed *sub nom. United States* v. *Pringle*, 212 F. 2d 878 (C. A. 4). This would result indirectly in placing at a substantial disadvantage certain favored aliens, such as veterans and spouses of United States citizens, who have by law been specially exempted from having to comply with various naturalization requirements. The adoption of petitioner's contention would mean that such favored aliens would have fewer rights with respect to naturalization under prior law than any member of the less favored alien groups who had taken, immediately on arriving in this country, one of the additional required preliminary steps.[29] This point is further spelled out with specific illustrations in our brief in *Menasche*, at pp. 31–34.

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[29] In general, the favored aliens were given a shorter period of residence and were exempted from having to file a declaration of intention. Thus, their naturalization process could begin only after the completion of their required period of United States residence. The less favored group were free to begin their naturalization preliminaries immediately on lawful arrival in this country for permanent residence.

3. Section 405 (a) does not govern the hearing and determination of any naturalization petitions

Petitioner also attempts to find an interstice or hiatus in Section 405 (b), which would permit Section 405 (a) to govern his case, even though Section 405 (b) were held in most conflicting cases to be the savings clause applicable to the hearing and determination of pending naturalization petitions (Pet. Br. pp. 31–36). Petitioner suggests that Section 405 (b) and Section 318 may have been intended to make the 1950 priority provisions govern the determination of pending naturalization petitions where deportation proceedings were subsequently commenced on grounds available under the former law; but that Section 405 (a), by reason of such phrases as "right in process of acquisition", was intended to govern where as here the deportation proceedings are on grounds which were not a basis for deportation under prior law.

As Judge Dimock pointed out, in rejecting this contention, "Congress used no words to indicate that that was its intention" (R. 10). This had not been the scheme used in the 1950 Act when new grounds for deportability had been created and the priority provisions were first enacted. As has already been shown, *supra*, p. 18, these provisions become immediately effective as to all pending naturalization proceedings. The reenactment

of these priority provisions in the 1952 Act, in such a way as to become immediately applicable "[n]otwithstanding" the only savings provision by its terms applicable to the hearing and determination of naturalization petitions, shows the strongest intention to make the 1952 priority provisions similarly applicable to all pending proceedings without exception, rather than the narrower application suggested by petitioner as possibly intended by Congress. The points heretofore developed, *supra*, pp. 19–39, regarding both the legislative history and the statutory context, not only give no support to this "interstice" argument, but, on the contrary, tend affirmatively to rebut it.

It follows that there is no merit in any of petitioner's contentions based on his claim that various of the general terms used in Section 405 (a), including "right in process of acquisition", were intended to apply to the hearing and determination of naturalization petitions. Therefore, Section 405 (b) stands as the only savings provision of the 1952 Act which is applicable to the hearing and determination of naturalization petitions. However, this section, which would have otherwise been applicable to petitioner's case, has been rendered inapplicable by the express inclusion in Section 318 of the phrase "[n]otwithstanding the provisions of section 405 (b)".

B. THE WORDS "NOTWITHSTANDING THE PROVISIONS OF SECTION 405 (B)" PREVENT THE ONLY SAVINGS CLAUSE APPLICABLE TO THE HEARING AND DETERMINATION OF NATURALIZATION PETITIONS FROM GOVERNING CASES INVOLVING THE PRIORITY PROVISIONS OF SECTION 318

Petitioner appears to give tacit recognition to the many difficulties inherent in his main position by suggesting a possible alternative which centers upon the appearance of a semicolon in Section 318 (Pet. Br. 11–12, 27–30). This alternative was properly characterized by Judge Clark as "so minor and ambiguous a punctuational variation" (R. 17), and by Judge Frank as an "attempt at a thoroughgoing semicolonization of § 318" (R. 19). This punctuational contention rests on the use of a semicolon rather than a comma to separate the priority provision relating to final findings of deportability from the one relating to pending deportation proceedings.[30] This contention is directly refuted (1) by petitioner's erroneous assumption as to the origin of the semicolon; (2) by the complete lack of any reason or explanation on the part of Congress to change the previous statutory scheme; (3) by the absence of punctuation in the clause excepting certain veterans from the operation of the priority provisions of Section 318; and (4) by the inherent weakness and fallibility of punctuational arguments generally and by the specific weakness of this one in particular.

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[30] See *infra*, p. 45, for the pertinent text of Section 318 as finally enacted.

Petitioner states (Pet. Br. 11): "When the 'notwithstanding' clause was added to the provision, a semicolon was also added separating petitioners with final findings of deportability from those with deportation proceedings pending." This assumption is incorrect, in so far as it implies that the semicolon was added to the section by reason of the addition of the "notwithstanding" clause. This is shown by reference to the successive drafts of the "omnibus bill", set forth in Appendix B, *infra*, pp. 50–56.

Petitioner correctly states that when these provisions were initially introduced in S. 3455, 81st Congress, 2d Session, and first enacted in the Subversive Activities Control Act of 1950, the two phrases were separated by a comma and omitted any reference to other sections. However, petitioner fails to note that the semicolon was added in S. 716, 82d Congress, 1st Session, although this draft, like the earlier ones, contained no "notwithstanding" clause. Obviously, this change in punctuation was made in accordance with the well recognized rule that a semicolon is used to separate the parts of a sentence more distinctly than a comma. Thereafter, four subsequent "omnibus bills", introduced during the same session, contained this provision in the verbatim form in which it appeared in S. 716. The "notwithstanding" clause was first added to Section 318 in the bill introduced during the following session as S. 2550.

In inserting this addition without changing the semicolon back to a comma, there is not the least indication of any intent to limit the applicability of the "notwithstanding" clause to final findings of deportability. As Judge Dimock stated, in rejecting petitioner's contention in the District Court (R. 11):

> * * * Nevertheless, the complete lack of any explanation for a desire of Congress to change the previous statutory scheme and provide for differentiation of the treatment of deportation proceedings before final finding from that after final finding and the complete absence of any indication, outside of the punctuation, of an intention to make such a change lead me to believe that the introduction of the semicolon does not have the effect which petitioner attributes to it.

It is even not at all clear that any such change would have been in the interest of grammatical nicety, since the semicolon is frequently and properly used to separate clauses or phrases having common dependence on a principal element, or even merely to separate two members of a compound sentence, where one or more of the members contains a comma. See Webster's International Dictionary (2d ed. 1948) p. 2274; cf. United States Government Printing Office Style Manual (1953 ed.) p. 138.

Furthermore, the history of the 1952 Act when in conference furnishes even more compelling

proof that no such distinction was intended. The opponents of stricter naturalization rules succeeded in having the priority provisions of Section 318 entirely deleted from the "omnibus bill" when it was in committee in the House; and as passed by the House, no priority provisions were included in this section (see Appendix B, *infra*, pp. 55–56). However, the priority provisions were reinserted when the House bill came before the Senate, the punctuation and wording appearing in S. 2550 being used. In conference, the Senate version was accepted, but only after it had been modified so as to exempt from its operation certain persons who were either veterans of World War II or who had served honorably in our armed forces. See House Report No. 2096, 82d Congress, 2d Session, p. 129. Thus, as finally enacted, Section 318, in pertinent part, provides:

> SEC. 318. * * * Notwithstanding the provisions of section 405 (b), and except as provided in sections 327 and 328 no person shall be naturalized against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this or any other Act; and no petition for naturalization shall be finally heard by a naturalization court if there is pending against the petitioner a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this or any other Act: * * *

Obviously, this exception insisted on by the House conference committee for the benefit of certain favored veterans was intended to apply equally to pending deportation proceedings affecting such veterans, as well as to final deportation findings. Yet this exception phrase was inserted without even a comma. Thus, petitioner urges a reading which would only permit such exempted veterans to be naturalized after a final finding of deportability, but not while such proceedings were pending. This was unquestionably not intended.

Petitioner's punctuational argument is utterly without merit, as was unanimously recognized by the courts below (R. 11, 16–17, 19–20).

CONCLUSION

For the above reasons it is respectfully submitted that the judgment of the Court of Appeals should be affirmed.

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FEBRUARY 1955.

APPENDICES—STATUTES INVOLVED

APPENDIX A: COMPARISON OF SAVINGS CLAUSES IN THE 1940 AND 1952 ACTS

To facilitate comparison, the full text of the savings clauses of the Nationality Act of 1940, Section 347, 54 Stat. 1168, 8 U. S. C. (1946 ed.) 747, and the pertinent portions of the savings clauses of the Immigration and Nationality Act of 1952, 66 Stat. 280, 8 U. S. C. 1101, note, are set forth below in parallel columns.

NATIONALITY ACT OF 1940	IMMIGRATION AND NATIONALITY ACT OF 1952
SAVINGS CLAUSES	SAVINGS CLAUSES
SEC. 347. (a) Nothing contained in either chapter III or in chapter V of this Act, unless otherwise provided therein, shall be construed to affect the validity of any declaration of intention, petition for naturalization, certificate of naturalization or of citizenship, or other document or proceeding which shall be valid at the time this Act shall take effect; or to affect any prosecution, suit, action, or proceedings, civil or criminal, brought, or any act, thing, or matter, civil or criminal, done or existing, at the time this Act shall take effect; but as to all such prosecutions, suits, actions, proceedings, acts, things, or matters, the statutes or parts of statutes repealed by this Act, are hereby continued in force and effect.	SEC. 405. (a) Nothing contained in this Act, unless otherwise specifically provided therein, shall be construed to affect the validity of any declaration of intention, petition for naturalization, certificate of naturalization, certificate of citizenship, warrant of arrest, order or warrant of deportation, order of exclusion, or other document or proceeding which shall be valid at the time this Act shall take effect; or to affect any prosecution, suit, action, or proceedings, civil or criminal, brought, or any status, condition, right in process of acquisition, act, thing, liability, obligation, or matter, civil or criminal, done or existing, at the time this Act shall take effect; but as to all such prosecutions, suits, actions, pro-

ceedings, statutes [sic], conditions, rights, acts, things, liabilities, obligations, or matters the statutes or parts of statutes repealed by this Act are, unless otherwise specifically provided therein, hereby continued in force and effect. When an immigrant, in possession of an unexpired immigrant visa issued prior to the effective date of this Act, makes application for admission, his admissibility shall be determined under the provisions of law in effect on the date of the issuance of such visa. An application for suspension of deportation under section 19 of the Immigration Act of 1917, as amended, or for adjustment of status under section 1 of the Displaced Persons Act of 1948, as amended, which is pending on the date of enactment of this Act, shall be regarded as a proceeding within the meaning of this subsection.

(b) Any petition for naturalization heretofore filed which may be pending at the time this Act shall take effect shall be heard and determined within two years thereafter in accordance with the requirements of law in effect when such petition was filed.

(b) Except as otherwise specifically provided in title III, any petition for naturalization heretofore filed which may be pending at the time this Act shall take effect shall be heard and determined in accordance with the requirements of law in effect when such petition was filed.

[Subsections (c), (d), and (e) are not here pertinent.]

Reference to the initial draft of these savings clauses, as they appear in the first of the so-called "omnibus bills" introduced by Senator McCarran, S. 3455, 81st Congress, 2d Session,

discloses, *inter alia*, that the words "status, condition" were included, but the words "right in process of acquisition" were omitted. An explanation of the inclusion of this latter term is found in the detailed analysis and comment prepared by the Immigration and Naturalization Service, to which reference is made in Senate Report 1137, 82d Congress, 2d Session, p. 3, and House Report No. 1365, 82d Congress, 2d Session, pp. 27–28. This analysis from the Immigration and Naturalization Service states, at pp. 361–1 and 361–2:

> *Section 361.*[1]
>
> This section is designed to replace section 347 and the last paragraph of section 504 of the 1940 Act. The section provides certain savings clauses in connection with preserving the validity of documents, liability for civil and criminal proceedings, and other matters set forth in the draft, after the bill takes effect.
>
> Subsection (a) will replace section 347 (a) of the 1940 Act. The interpretation of the savings clause in section 347 (a) has been the subject of divergent court decisions and an attempt has been made in this draft to clarify the meaning of the provision. The court decisions in question are *U. S. ex rel. Aberasturi* v. *Cain*, 147 F. (2d) 449, and *Berlodi* v. *McGrath*, 178 F. (2d) 977. The addition of the words "status" and "condition" on line 2, page 241 of the bill is an obvious attempt to overcome the decision in the *Aberasturi*

[1] The savings provisions which were ultimately enacted in Section 405 of the 1952 Act were first introduced as Section 361 of S. 3455.

case. The Service believes that the addition of these words is desirable, since the *Aberasturi* decision was contrary to the Service views of the proper interpretation of section 347 (a) of the 1940 Act. The decision in the *Berdaldi* case, however, was in line with the Service viewpoint. It is further recommended that, in addition, there be added following the word "condition" on line 2, page 241, the words "right in process of acquisition,". It is believed that it would also be desirable to add following "suits" on line 4, page 241, the language "actions, proceedings, statuses, conditions, rights,".

Subsection (b) of the draft replaces section 347 (b) of the 1940 Act except that the provision, that any pending petition at the time of the effective date of that Act should be heard and determined within two years thereafter in accordance with the requirements of law in effect when such petition was filed, has been replaced in this draft with a provision which contains no time limitation for disposing of pending petitions.

Appendix B: Legislative History of Section 318 of the Immigration and Nationality Act of 1952

Section 318 of the Immigration and Nationality Act of 1952, 66 Stat. 244, 8 U. S. C. 1429, provides:

> Sec. 318. Except as otherwise provided in this title, no person shall be naturalized unless he has been lawfully admitted to the United States for permanent residence in accordance with all applicable provisions

of this Act. The burden of proof shall be upon such person to show that he entered the United States lawfully, and the time, place, and manner of such entry into the United States, but in presenting such proof he shall be entitled to the production of his immigrant visa, if any, or of other entry document, if any, and of any other documents and records, not considered by the Attorney General to be confidential, pertaining to such entry, in the custody of the Service. *Notwithstanding the provisions of section 405 (b), and except as provided in sections 324 and 328 no person shall be naturalized against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this or any other Act; and no petition for naturalization shall be finally heard by a naturalization court if there is pending against the petitioner a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this or any other Act: Provided*, That the findings of the Attorney General in terminating deportation proceedings or in suspending the deportation of an alien pursuant to the provisions of this Act, shall not be deemed binding in any way upon the naturalization court with respect to the question of whether such person has established his eligibility for naturalization as required by this title. [Italics supplied except for word "Provided."]

The italicized clauses in Section 318 provide for the priority of deportation findings and proceedings over proceedings for naturalization and are generally called "priority provisions." The

legislative history of these priority provisions, in so far as appears pertinent, is set forth below.

(1) *S. 3455, 81st Congress, 2d Session, introduced April 20, 1950.* The legislative origin of the priority provisions of Section 318 of the 1952 Act appears to have been in S. 3455, introduced by Senator McCarran. This bill was the first of the so-called "omnibus bills" to revise and codify in one statute all immigration, nationality and naturalization laws. Section 317 of this bill contained a new provision giving priority to deportation proceedings, no similar provision having been theretofore enacted. It provided, in pertinent part:

> SEC. 317. * * * No person shall be naturalized against whom there is outstanding a final finding of deportability, and no petition for naturalization shall be finally heard by a naturalization court if there is pending against the petitioner a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this or any other Act: * * *[2]

(2) *Section 27 of the Subversive Activities Control Act of 1950.* Without waiting for the passage of an "omnibus bill", Senator McCarran incorporated the above section without substantial change in his version of the Subversive Activities Control Act, which was introduced on August 10, 1950, as S. 4037, 81st Congress, 2d Session. It was promptly enacted as Section 27 of this Act, which (as H. R. 9490, 81st Congress, 2d Session)

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[2] No changes here relevant were made in the omitted portions of this section from initial introduction in S. 3455 in 1950 to final enactment in 1952.

became law on September 23, 1950. 64 Stat. 1015, 8 U. S. C. (1946 ed. Supp. V) 729 (c). The wording of the priority provisions was unchanged from that set forth above from S. 3455. In form the section was an amendment to Section 329 of the Nationality Act of 1940, 54 Stat. 1152, 8 U. S. C. (1946 ed.) 729. This Act took immediate effect and contained no savings clause. Section 27 thus operated to stay naturalization proceedings already pending on the date the new law took effect, even when the deportation proceedings were commenced subsequent to the filing of the naturalization petition. *United States ex rel. Jankowski* v. *Shaughnessy*, 186 F. 2d 580 (C. A. 2).

(3) *S. 716, 82d Congress, 1st Session, introduced January 29, 1951.* This was the second version of Senator McCarran's "omnibus bill". In this bill, the priority provisions section was renumbered Section 318, which in pertinent part, provided:

> SEC. 318. * * * No person shall be naturalized against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this or any other Act;[3] and no petition for naturalization shall be finally heard by a naturalization court if there is pending against the petitioner a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this or any other Act: * * *

It should be noted that this draft, which is the first to use the controversial semicolon, does *not*

[3] This semicolon here replaces the comma used in prior drafts.

include the words "[n]otwithstanding the provisions of section 405 (b)". Thus, the District Court was mistaken in assuming that (R. 11):

> It is true that the semi-colon on which this construction depends was first introduced into the priority section when the words "notwithstanding the provisions of section 405 (b)" were prefixed in the course of the enactment of the Act of 1952.

Petitioner's argument (Pet. Br. 27–30) regarding the effect of the semicolon is, therefore, based on a wholly false initial premise.

Identically worded and punctuated sections appear in each of the next four "omnibus bills" introduced during this session; *i. e.*, H. R. 2379, 82d Congress, 1st Session, introduced February 5, 1951, by Representative Walter; H. R. 2816, 82d Congress, 1st Session, introduced February 22, 1951, by Representative Celler; S. 2055, 82d Congress, 1st Session, introduced August 27, 1951, by Senator McCarran; and H. R. 5678, 82d Congress, 1st Session, introduced October 9, 1951, by Representative Walter.

(4) *S. 2550, 82d Congress, 2d Session, introduced January 29, 1952.* This constituted the fourth version of Senator McCarran's "omnibus bill". Here the words "[n]otwithstanding the provisions of section 404 (b)"[1] were first added to Section 313, forbidding the naturalization of communists and other subversives, to Section 315, forbidding the naturalization of persons relieved from service in the Armed Forces because of alienage, and to Section 318, so as to except these

[1] In S. 2550, Section 404 (b) was identical to the provision which was finally enacted as Section 405 (b) in the 1952 Act.

sections from the savings clause subsection applicable to the hearing and determination of naturalization petitions. In this bill, Section 318, in pertinent part, provided:

> SEC. 318. * * * *Notwithstanding the provisions of section 101 (b)*, no person shall be naturalized against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this or any other Act; and no petition for naturalization shall be finally heard by a naturalization court if there is pending against the petitioner a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this or any other Act: * * * [Italics indicate new matter.]

Section 318 appears identically worded and punctuated in S. 2842, 82d Congress, 2d Session, introduced March 12, 1952, by Senator Humphrey, and in H. R. 7032, introduced March 12, 1952, by Representative Roosevelt.

(5) *H. R. 5678, 82d Congress, 2d Session, passed by the House of Representatives April 25, 1952.* Although the priority provisions of Section 318 were included in H. R. 5678 when it was introduced, they were deleted in committee. See H. Rep. No. 1365, 82d Congress, 2d Session, p. 4 (Amendment 26). Section 318 was thus passed by the House with the priority provisions wholly omitted.

(6) *Section 318 of the Immigration and Nationality Act, as finally enacted June 27, 1952.* The final Senate version of the "omnibus bill" reinstated the priority provisions. In conference, the Senate version was accepted, but only

after it had been modified so as to exempt from its operation certain persons who were either Veterans of World War II or who had served honorably in our Armed Forces. See House Report No. 2096, 82d Congress, 2d Session, p. 129. Thus, the section, as finally enacted, in pertinent part, provides:

> SEC. 318. * * * Notwithstanding the provisions of section 405 (b), *and except as provided in sections 327 and 328* no person shall be naturalized against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this or any other Act; and no petition for naturalization shall be finally heard by a naturalization court if there is pending against the petitioner a deportation proceeding pursuant to a warrant of arrest issued under the provisions of this or any other Act: * * * [Italics indicate new matter.]

APPENDIX C: OTHER STATUTORY PROVISIONS

Section 241 (a) (4) of the 1952 Act is the provision under which petitioner has become subject to deportation. Section 241 (d) makes 241 (a) (4) applicable to events which took place prior to the effective date of the 1952 Act. Sections 311, 313 (a), 315 (a) and 331 (d), together with Section 318 set forth *supra*, pp. 50–51, are from title III of the 1952 Act and contain the specific exceptions to the savings provisions of Section 405 (b).

Section 310 (a) of the Nationality Act of 1940 is the provision under which petitioner seeks naturalization.

These sections provide:

(1) *Immigration and Nationality Act of 1952*

SEC. 241. (a) Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—

* * * * *

(4) is convicted of a crime involving moral turpitude committed within five years after entry and either sentenced to confinement or confined therefor in a prison or corrective institution, for a year or more, or who at any time after entry is convicted of two crimes involving moral turpitude, not arising out of a single scheme of criminal misconduct, regardless of whether confined therefor and regardless of whether the convictions were in a single trial; [66 Stat. 204, 8 U. S. C. 1251 (a) (4)].

* * * * *

SEC. 241. * * * (d) Except as otherwise specifically provided in this section, the provisions of this section shall be applicable to all aliens belonging to any of the classes enumerated in subsection (a), notwithstanding (1) that any such alien entered the United States prior to the date of enactment of this Act, or (2) that the facts, by reason of which any such alien belongs to any of the classes enumerated in subsection (a), occurred prior to the date of enactment of this Act [66 Stat. 208, 8 U. S. C. 1251 (d)].

* * * * *

SEC. 311. The right of a person to become a naturalized citizen of the United States shall not be denied or abridged because of race or sex or because such person

is married. *Notwithstanding section 405 (b)*,[5] this section shall apply to any person whose petition for naturalization shall hereafter be filed, or shall have been pending on the effective date of this Act [66 Stat. 239, 8 U. S. C. 1422].

SEC. 313. (a) *Notwithstanding the provisions of section 405 (b)*,[6] no person shall hereafter be naturalized as a citizen of the United States—

(1) who advocates or teaches, or who is a member of or affiliated with any organization that advocates or teaches, opposition to all organized government; or

(2) who is a member of or affiliated

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[5] Italics supplied. The italicized words in Section 311 did not appear in the initial draft of the "omnibus bill", S. 3455, 81st Congress, 2d Session. In the detailed analysis prepared by the Immigration and Naturalization Service (see Senate Report No. 1137, 82d Congress, 2d Session, p. 3) at p. 319, the following appears: "The last sentence of section 310 of the bill will make section 310 applicable to petitions filed after the effective date of the bill as well as to those pending when the bill is enacted. In order to avoid any possible conflict with section 361 (b) of the bill, it is suggested that there be inserted at the beginning of line 5, page 160 the phrase 'Notwithstanding section 361 (b),'". In the 1952 Act, as finally adopted, Section 310 of S. 3455 became Section 311, and Section 361 (b) of S. 3455 became Section 405 (b). The italicized words first appeared in the second draft, S. 716, 82d Congress, 1st Session, and similar language appeared thereafter in the various drafts subsequently introduced in both the Senate and the House.

[6] Italics supplied. The italicized words in both Section 313 (a) and Section 315 (a), *infra*, p. 61, first appeared in the fourth McCarran draft, S. 2550, 82d Congress, 2d Session, but were not included in any of the House bills or in Senator Humphrey's subsequently introduced S. 2842, 82d Congress, 2d Session.

with (A) the Communist Party of the United States; (B) any other totalitarian party of the United States; (C) the Communist Political Association; (D) the Communist or other totalitarian party or [sic] any State of the United States, of any foreign state, or of any political or geographical subdivision of any foreign state; (E) any section, subsidiary, branch, affiliate, or subdivision of any such association or party; (F) the direct predecessors or successors of any such association or party, regardless of what name such group or organization may have used, may now bear, or may hereafter adopt; (G) who, regardless of whether he is within any of the other provisions of this section, is a member of or affiliated with any Communist-action organization during the time it is registered or required to be registered under the provisions of section 7 of the Subversive Activities Control Act of 1950; or (H) who, regardless of whether he is within any of the other provisions of this section, is a member of or affiliated with any Communist-front organization during the time it is registered or required to be registered under section 7 of the Subversive Activities Control Act of 1950, unless such alien establishes that he did not have knowledge or reason to believe at the time he became a member of or affiliated with such an organization (and did not thereafter and prior to the date upon which such organization was so registered or so required to be registered have such knowledge or reason to believe) that such organization was a Communist-front organization; or

(3) who, although not within any of the other provisions of this section, advocates the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, or who is a member of or affiliated with any organization that advocates the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship, either through its own utterances or through any written or printed publications issued or published by or with the permission or consent of or under authority of such organization or paid for by the funds of such organization; or

(4) who advocates or teaches or who is a member of or affiliated with any organization that advocates or teaches (A) the overthrow by force or violence or other unconstitutional means of the Government of the United States or of all forms of law; or (B) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government because of his or their official character; or (C) the unlawful damage, injury, or destruction of property; or (D) sabotage; or

(5) who writes or publishes or causes to be written or published, or who knowingly circulates, distributes, prints, or displays, or knowingly causes to be circulated, distributed, printed, published, or displayed, or who knowingly has in his possession for the purpose of circulation,

publication, distribution, or display, any written or printed matter, advocating or teaching opposition to all organized government, or advocating (A) the overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law; or (B) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character; or (C) the unlawful damage, injury, or destruction of property; or (D) sabotage; or (E) the economic, international, and governmental doctrines of world communism or the establishment in the United States of a totalitarian dictatorship; or

(6) who is a member of or affiliated with any organization that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or printed matter of the character described in subparagraph (5)

[66 Stat. 240, 8 U. S. C. 1424 (a)].

SEC. 315. (a) *Notwithstanding the provisions of section 405 (b)*,[1] any alien who applies or has applied for exemption or discharge from training or service in the Armed Forces or in the National Security Training Corps of the United States on the ground that he is an alien, and is or

[1] Italics supplied. See note 6, *supra*, p. 58.

was relieved or discharged from such training or service on such ground, shall be permanently ineligible to become a citizen of the United States [66 Stat. 242, 8 U. S. C. 1426 (a)].

SEC. 331. * * *

(d) An alien who is a native, citizen, subject, or denizen of any country, state, or sovereignty with which the United States is at war shall cease to be an alien enemy within the meaning of this section upon the determination by proclamation of the President, or by concurrent resolution of the Congress, that hostilities between the United States and such country, state, or sovereignty have ended. *Notwithstanding the provisions of section 405 (b),** this subsection shall also apply to the case of any

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* Italics supplied. The italicized words in Section 331 (d) were first added in the third McCarran draft, S. 2055, 82d Congress, 1st Sess., and were included in all subsequently introduced drafts of the bill. This change was one recommended in the detailed analysis of S. 716, 82d Congress, 1st Session, prepared by the Immigration and Naturalization Service (cf. Senate Report No. 1137, 82d Congress, 2d Session, p. 3), at p. 331-2:

"If and when subsection (d) is enacted, it is apparently intended that the status of Germans and Japanese as alien enemies, which now exists under section 326 of the 1940 Act, shall be terminated. Presidential Proclamation No. 2714 (12 F. R. 1) has already declared an end of hostilities in World War II as of December 31, 1946. This result seems to follow from the express language of the last sentence of subsection (d), which requires that the provisions of the entire subsection shall apply to petitions which are pending on the effective date of the bill. However, in order to avoid any conflict with the savings clause (section 405 (b)), it is suggested that on line 16, page 212, immediately preceding the word 'This', there be inserted 'Notwithstanding the provisions of section 405 (b),'."

such alien whose petition for naturalization was filed prior to the effective date of this Act and which is still pending on that date [66 Stat. 252, 8 U. S. C. 1442 (d)].

(2) *Nationality Act of 1940*

SEC. 310. (a) Any alien who, after September 21, 1922, and prior to May 24, 1934, has married a citizen of the United States, or any alien who married prior to May 24, 1934, a spouse who was naturalized during such period and during the existence of the marital relation may, if eligible to naturalization, be naturalized upon full and complete compliance with all requirements of the naturalization laws, with the following exceptions:

(1) No declaration of intention shall be required;

(2) In lieu of the five-year period of residence within the United States, and the six months' period of residence in the State where the petitioner resided at the time of filing the petition, the petitioner shall have resided continuously in the United States for at least one year immediately preceding the filing of the petition [54 Stat. 1144, 8 U. S. C. (1946 ed.) 710 (a)].